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Decus & Tutamen :

OR, A ^{C#}
P R O S P E C T
OF THE
L A W S of ENGLAND,

Purposely framed for the Safe-guard of the K I N G's Majesty, His Sacred Person, Crown and Dignity, against all Traiterous Speeches, Designs, and Conspiracies.

To which are added,
Peculiar *NOTES* upon the Judgment in *HIGH TREASON*.

Fit for all His Majesty's Subjects and Leige-People to be acquainted withal.

By *JOHN BRYDALL*,
of the Honourable Society of
Lincolns-Inn, Esquire.

Deum timere, Regi honorem exhibere bonum est.

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The PREFACE.

Courteous Reader,

Here is Exposed to the
View of the World, a
Brief Survey of the
Municipal LAWES of this
Kingdome, particularly relating
to the Preservation of His Most
Sacred Majestie, his Crown and
Dignity, and the Quiet of these
Realms. Together with a Col-
lection of sundry Cases, Opi-
nions, and Points of Learning
touching that Hainous and De-
testable Crime of High Trea-
son.

The Preface.

son. Provided purposely against by our Supream Legislators the Kings and Queens of England, for the Maintenance of their own Safety and Royal Power, in opposition to the Traiterous and Seditious Practices of those who account it Merit (even to Salvation) Nefariously to eradicate, tread under Foot, and Evacuate all Sacred Tyes and Civil Sanctions: Little regarding their Natural Sovereign, to whom De Jure Naturæ, and by all Lawes Divine and Humane, they owe their Due Allegiance.

This Bond is so inviolable and inherent in the Hearts of Subjects, that it must not admit
of

The Preface.

of the least Relax or Deviation. In short, it may not be Forfeited, Removed, nor Circumscribed; but that all Natural-Born Subjects have in what part soever of the World they Inhabit or Reside, these Obligations of Duty and Loyalty to His Most Serene Majesty; on whose Life Solely Depend the Lawes, the Liberties, the Properties, and in Sum, the Glory of the English Nation.

THE

THE

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Corrigenda.

Corrigenda.

THE Reader is desired to Correct these two faults, before he begin; other small faults of Literal Errorshis Candor may pass over.

Pag. 59. l. 8. for (two) read (three)
pag. 14. l. 25. for R. 3. read R. 2.



THE
LAW
FOR THE
Safety of the Crown.

FOR an Entrance into
this Discourse, I shall
shew the Reader, the
Etymology of the
word Treason, the Horrible-
ness of High Treason, and the
division thereof.

B I. The

1. **T**HE word [*Treason*] is derived from the word [*Trahir,*] which is Treacherously to betray. *Trabue* betrayed; and *Trabison*, per *Contractionem*, *Treason*, is the betraying it self. In Law French it is called *Crime de Majestie*, in Latine, *Crimen Laesa Majestatis*, *proditio*, (*a prodere*.) and thereof cometh *praditorie*, which of necessity must be used in every Indictment of *Treason*, and cannot be expressed by any other word, *Periphrasis*, or *Circumlocution*.

2. The Horribleness of this Crime of *High Treason*, is apparanted by our Books: Amongst the Laws of *Canutus* tis said, That *proditiones numerabantur inter scelera jure humano in expiabilia*, The Mirrour sayes, that it is *un peche horrible fait al Roy*. The Civilians rank it next to *Sacrilege*, and *Sacrilege* is a Crime, *quo divina Majestas pulsatur*. The judgment against a Traytor doth much describe the abominableness of *High Treason*. And it is this, That

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That he shall be drawn to Execution, because he is not worthy to go upon the Earth. 2. His Privy Members shall be cut off. 3. His Bowels burnt; because the Treason was there hatcht. 4. He shall be decapitated. 5. Dismembred. And in this Judgment are Five Judgments included. 1. All his goods are Forfeited. 2. Life, and Member. 3. His Honour. 4. His *pendenda* cut off, which shews that his Issues are disinherited, and their blood corrupted. 5. The Dower of the Wife is forfeited. 1. Because he is a *Traitor* to God. 2. To the King, that is God's Vice-Gerent upon Earth. 3. To the King, and Realm. 4. To the Law. 5. To his own Allegiance.

3. I come to divide this *High-Treason*. And do it thus, *Treasons* are either Antient, or Novel. The antient *Treasons* are such as were before the Statute of 25 E. 3. Or comprehended within that Statute; The *Treasons* Novel are those that are fo

made, since the said Statute of 25.
E. 3.

*First concerning old Treasons,
before the Statute of 25 E.*

3.

Before I come to speak of these
antient Treasons, I shall shew some-
what of the Civil Law, touching this
Crimen lese Majestatis.

Majestatis Crimen (says a Civilian)
is *incurrit, qui aliquid molitur, adver-*
sus Imperatorem, vel Rempublicam,
vel exercitium, vel ejus duces.

Nuntium, Literasve hosti mittere, vel
signum dare adversus Rempublicam,
Majestatis Crimen est.

Consilium Hosti adversus Rempubli-
cam dare, Majestatis Crimen est. De-
sertor exercitus Majestatis Crimine te-
netur, &c. Thus much for the Ci-
vil Law.

At

Safety of the Crown.

At the Common Law saies Britton, in the person of the King; Grand Treason est a Compasser nostre mort.

Si quis machinatus fuerit, vel aliquid fecerit, in mortem Regis, vel seditionem Regni vel exercitus, vel consenserit, consiliumve dederit, vel Auctoritatem prestiterit; These (sayes Glanvil, who wrote long before Britton) are High Treasons. Lib. 14. f. 114.

Siquis ausu temerario (says Bracton) machinatus sit mortem Regis, aut aliquid egerit, vel agi procuraverit, ad seditionem Domini Regis, vel exercitus sui, vel procuraverit Auxilium, vel Consilium prestiterit aut Consensum, licet id quod in voluntate habuerit, non produxerit ad effectum, tenetur tamen Crimine Lese Magistratus.

To Counterfeit the Great Seal, Britton f. 10. was counted High Treason at the Common Law.

Britton,
Tit. Appeals
f. 39. or
fol. 43.
Stamford.
f. 1.

If a man Compass the death of the Father or Mother of the King, or his Children, or disinherit him of his Realm, or betray his Army, although it be not reduced to effect, yet 'tis Treason. So 'tis, where a man *pugila les files le Roy, ou ses norfes des ses infants.*

Co. 3. Inst.
f. 16.

To Counterfeit the King's Coin, was Treason at the Common-Law.

21 E. 3.
23.

If a man kill him, that goes to aid the King in His Warr, this is Treason.

22. Lib.
Ass. pl. 49.

If any kill a Messenger of the King, going to execute his Command, this is Treason.

10 H. 2. c.
8.

It was adjudged *High Treason* to bring in Bulls of Excommunication, and this Law is but a Declaration of the Common Law.

If a Man be in the Field against his Prince, and there is Slain, this is

Safety of the Crown.

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is Treason, and this is as an Attainder in Law, without any more ado, by the antient Law of the Land; for he himself is the cause that the Course of Law proceeded not against him, as Justice Brown sayes in *Plowd. Commentaries*.

Com. fol.
262.

Compassing, Machinating, Counselling, &c. To kill the King, tho it hath no other Declaration thereof, but by words, was *High Treason* by the Common Law.

Co. 3. Inst.
5, & 6.

The antient Law was, If a mad Man had killed, or offered to kill the King, it was holden for Treason.

Co. Lib. 4.
Beverley's
Case. Co. 3.
Inst. 6.

Judgment was given against Sir John Matrevers Knight, and others, as being Guilty of the Death of the King's Uncle, Edmund Earl of Kent, which at that Time (being so near of the blood Royal) was by some holden for Treason.

Co. 3. Inst.
f. 7.

B 4

Pyra-

Co. 3. Inst. 8. Piracy, Committed by any of the King's subjects was taken before 25 E. 3. to be Treason.

22 Aff. pl. 49. In 22 E. 3. One *John Hill*, had Murdered *A. de Walton* the King's Ambassadour, this was adjudged *High Treason*.

Mirror c. 1. To violate the King's Compani-
sett. 5. on, was *High Treason* by the Com-
Britton c. mon Law.
32. f. 43. a.

Britton f. If the *Chancellor*, or Lord Keeper
10. 6. put the Great Seal to a Charter, &c.
without Warrant this was Treason at the Common Law.

Brañon At the Common Law, Conceal-
lib. 3. f. ment of *High Treason*, was Treason.
118. 6.

Roll's Re-ports, case of *Williams of Essex*. f. 89, 90. *Telverton* said, That there are four Manner of Treasons at the Common Law. 1. Rebellion. 2. To deny the King's Title and Power, Temporal or Spiritual. 3. To advance and maintain a Superior

Safety of the Crown.

rior Power to the King. 4. In bearing his Subjects in hand, That the King's government is Erroneous, Heretical, Unjust; whereby the manner of his Government is Impeached, and called in Question, To which Judge Dodridge agreed.

Secondly, Concerning Treasons within the Statute of 25 E.

3. c. 2.

The Statute of 25 E. 3. c. 2. is not *Introductivum novæ legis, sed Declarativum Juris Antiqui*, not Introductory of a new Law, but Declaratory of the Common Law of England; So that though in this same Statute there be not contained all manner of Treasons at the Common Law, yet whatsoever is declared Treason thereby, is the antient Law of this Kingdom. But with this Restriction, That if any other Case supposed to be Treason, should happen before any Justices,

the Justices shall tarry, without going to Judgment of the Treason, till the Case be shewed before the King and his Parliament, whether it ought to be adjudged Treason or other Felony.

25 E. 3. c. 1.
2. de pro-
ditionibus.

Now by the Statute of 25 E. 3. It is High Treason, to Compass the Death of the King, the Queen, or their Eldest Son, or to deflower the King's Wife, the King's Eldest daughter unmarried, or the King's Eldest Son, and Heirs Wife; Or to be adherent to his Enemies; Or to Counterfeit the King's great Seal, Privy Seal, or Money; or to bring false Money into this Realm. Or to Slay the Chancellor, Treasurer, Justices of the one Bench or other, or any Justice assigned to hear and determine, being in his Place, doing his Office. If the Offence be not within one of these Heads, it is no Treason.

1. Of Compassings.

The Compassing of the Death of the King, is the Highest Treason, that can be, and this appears by the 25 E. 3. where 'tis first named. And by the Law of Nations (saies *Yelverton*.) If an Ambassador compassse, and intend the Death of the Prince, in whose Realm he is, he may be condemned, and executed for that Treason. But if he commit any other Treason besides it, 'tis otherwise, There he ought to be sent to his own Countrey. Having told you, how the Compassing of the King's Death, is the Supream Treason, I shall offer Authorities out of our Bookes, concerning the Imagination or Compassing the King's Death.

Rolls Reports, Roy
v. Owen
alids Col-
lins f. 185.

When a Man doth Compasse, or Imagin the Death of our Lord the King, of my Lady his Queen or of their Eldest Son and Heir, and thereof be provably attainted of open deed,

25 E. 3. c.
2. de proditi-
tionibus.

deed, it is adjudged High Treason.

Newton
27. nu. 9.

If a man Imagin the death of the King, he shall be put to death for this Imagination, without any other thing, by him done.

C. 3. Inst.
f. 12. Br.
24. 10
E. 4. 6.
Hill. Dr. Lo-
his case.

If divers do conspire the death of the King, and the manner how, and thereupon provide Weapons, Powder, Poyson, &c. assay Harneſſ, ſend Letters, Meſſages, &c. or the like, for the Execution of the Conſpiracy, this is a ſufficient Overt-Act, to prove the Compaſſing, and Imagination of the death of the King.

Co. 3. Inst.
f. 12. Hill.
1 Jac. Lord
Cobham's
Case.

So preparation by ſome Overt-Act to depoſe the King: or to take the King by Force, and ſtrong hand, and to imprifon him, untill he hath yielded to certain demands this is a ſufficient Overt-Act, to prove the Compaſſing, and the Imagination of the death of the King: for this upon the matter is to make him a Subject,

Safety of the Crown.

13

Subject, and to despoil him of his Kingly Office of Royal Government; And so it was resolved by all the Judges of England. Hill. 1. Jac. Regis in the Case of the Lord Cobham, Lord Gray, and Watson, and Clerk Seminary Priests.

If an Attempt be made to Imprison the King, although that his death be not intended, yet it is High Treason, for it is the Means by which his death may ensue, and this was the Case of King Edward 2d.

Rolls Reports, the Case of Williams de Essex. f. 89.

A Conference had of the death of the Queen, and it did not take effect, and it was resolved to be High Treason.

Dyer in Throgmorton's Case.

The Justicers Assistants being asked their opinion, concerning the iterated protestations of the Earls of Essex and Southampton, that they intended no harm against the Queen pronounced, That,

Cambden's Eliz. 43. Of her reign Anno Domini. 1600. 1601.

IF

If any man shall attempt to make himself so strong, that the King shall not be able to resist him, he is guilty of Rebellion. In like manner the Law interpreteth, that in every Rebellion there is a Machination against the Life of the King, and his deposing: For a Rebel will not suffer that King to Live or Reign, which may afterwards punish or revenge such Treason, or Rebellion. These things they confirmed, by the Imperial or Civil Law, whereby to do any thing against the safety of the Prince, is holden to be Treason, By the force of Reason; because it cannot be, that he which hath once given Law to the King, should ever permit that the King should Recover his former Authority, or live, least at any time he should recover it; By examples drawn out of our English History, of *Edward the 2d.* and *Richard the 3d.* Who being by Force of Arms gotten by Subjects into their Power, were not long after deposed also, and made away.

The

Safety of the Crown.

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The Judges Assistants being asked by the Peers, whether the Consultation of the Earl of *Essex* and others, in *Drury House* were Treason, seeing it was not brought to Effect, they affirmed with one voice, It was; and that the Rebellion in the City of *London* was the prosecution of that Consultation: For if they had gotten together an Armed Power in the City, they would presently invade the Court.

Cambden's
Eliz. An.
1601.

Fitzherbert a most renowned Lawyer, saies, That the Inward thought of any Mischievous Crime, was Treason; but not to be so adjudged, till it have broken forth into Act, by word or fact.

The Act of 25 E. 3. saith, *per overt fact*, *per apertum factum* and not *per apertum dictum*, by word or Confession; And therefore 'tis commonly said, That bare words may make an Heretick, but not a Traytor, without an Overt-Act.

But

But if the same be set down in writing by the Delinquent himself, this is a sufficient Over-Act within the Stat. of 25 E. 3.

Cardinal *Poole*, albeit he was a Subject to H. 8. and of the King's Blood; yet he in the Book of the Supremacy of the Pope, incited *Charls* the Emperour, then preparing against the *Turke*, to bend his force against his natural Sovereign Lord, and Country, the writing of which book was a sufficient Overt-Act within the Statute of 25 E. 3. And to move the Emperour the rather in that Book, he made H. 8. almost as ill as the *Turk*.

*Rolls Re-
ports Case
of Williams
de Essex f.
89.*

Scribere est agere, and if words may amount to High Treason (as clearly they may,) *a fortiori*, when they are written.

Now that words attended with an Overt-Act, may be High Treason, take these following Precedents.

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The Duke of Buckingham, intending to be King, gave Liveries, *ad captandum benevolentiam*, And said, that he would be King, If the King died without Issue Male; And the Liveries were so made to express his Intent, and for this he was attainted of High Treason.

13 H. 8.
11, 12. Br.
nu. 21.

Oliver Germain a Taylor, and other false Traytors, imagining and proposing, how they should destroy King Edward the 4th, And to set up again H. 6, And to that end gave out in Prophecies, as false Hereticks, That the Lord Harry (late King) should be in a short time their King again, as before, These things were spoken by them, to Alienate the Peoples Love, and Affection from King Edw. the 4th. This said Germain had Judgment, to be Drawn, Hanged and Quartered.

Anno 2:
Edw. 4.

Henry Challercomb was Indicted of Treason for words, and was found Guilty and Executed.

To

*Roll's Re-
ports Roy
v. Owen L.
185.*

To say, That the King being ex-communicate, may be Lawfully deposed, and killed, was adjudged High Treason.

*Roll's Re-
ports Roy
v. Owen
alias Collins.*

Words in the Future Tense, touching the Person of the King, will be Treason, As one said, That if H. 8. would not take again *Q. Margaret* as his Wife, he should not be King, but dye as — And this was Treason; so the Duke of *Buckingham* said, That if the King Arrested him for Treason, he would stab him, and this was a present Treason; And one *Stanley* said, That if he knew that *Perkin Warbeck* was the Son of *Edw. the 4th*, He would take part with him against the present King, this was a present Treason, notwithstanding the words were spoken with the word [S:]

*cro. 3. part.
Crobagan's
Case f. 332.*

One *Crobagan*, an *Irishman*, was Arraigned of Treason, for that he being the King's Subject, at *Lisbou*, in *Spain*, used these words, I will kill

kill the King (*innuendo Dominum Carolum Regem Anglie*) If I may come unto him. And that in *August 9 Caroli Regis*, he came into *England* for the same purpose, To this he pleaded *Not Guilty*, and was tryed by a Jury of *Middlesex*, and it was directly proved by two Merchants, that he spake these words at *Lisbon* in *Spain*, in great Heat of Speech; and added these words, Because he is an Heretick. And for that his Trayterous Intent, and the Imagination of his Heart, is declared by these words, it was held High Treason, by the Course of the Common Law, and within the express words of 25 E. 3.

To conclude, It was resolved in one *Pine* his Case, That unless it were by some particular Statute, no words without an Overt-Act, will be Treason at this day, but by the Statute of 25 E. 3. For imagining the death of the King, &c. And the Indictment must be framed upon one of the points of that Statute.
And

Cro. 3. part. Hagb Pine Esq; his Case.

The Law for the

And therefore to make Compassing by bare words or sayings High Treason, it must be by some particular Statute; such were the Statutes of 26 H. 8. c. 13. 1 E. 6. c. 13. 1. et 2. Ph. and Mary, c. 9. 1. Eliz. c. 6. 13 Eliz. c. 1. et 14 Eliz. c. 1. But all these are repealed, or expired.

13. Car. 2.
nunc Regis
c. 1.

But note, That there is a Law made during the Life of His now Majesty (whom Almighty God preserve with a long and prosperous Reign) for the preservation of his Sacred Person and Government, against Treasonable and seditious Practices, proceeding either from Printing, Writing, Preaching or Malitious, and advised speaking.

On this same Statute, one *William Staley* was Indicted of High Treason, for speaking these words, Following,

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The King of England is the greatest Heretick, and the greatest Rogue in the World. Here is the Heart, and there's the Hand, that would kill him, I my self; And was found Guilty, and had Sentence passed on him, to be Drawn, Hanged and Quartered, and was Executed accordingly.

Mich. anno
30 Car. 2.
Regis in
Banco Re-
gis. Anno
Domini
1678.

Before I leave this Learning touching Compassings, It will not be (I think) much Impertinent to put these following Queries, with Resolutions on them.

Question 1. *Whether an Act done per Infortunium, without Compassing, or Imagination, be within the Statute of 25 E. 3.?*

It is answered, That there must be a Compassing, or Imagination, for an Act perpetrated *per Infortunium*, without Compassing, Intent or

Coke.

or Imagination is no Treason within this Act, as it appeareth by the expresse words thereof; *Et Actus non facit Reum, nisi mens sit Rea*. And if it be not within the words of the said Act, then by force of a Clause in it, viz. *Et per eo que plures Autors, &c.* It cannot be adjudged Treason, untill it be declared Treason by Parliament, which is the Remedy in that Case, which the Legislators provided in that Case.

Question 2. *Whether to Calculate how long the King shall Live be within the 25 E. 3.*

Coke.

I answer, That it is no Treason within that Statute, To Calculate, or seek to know, by setting of a Figure or Witch-Craft, how long the King shall Reign, or Live; for it is no Compassing or Imagination of the Death of the King; And this

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this is apparanted by the Judgment of the Parliament in 23 Eliz. whereby this Offence was made Felony, during the Life of the Queen, which before was punishable, by Fine, & Imprisonment.

De vita Principis (saies Scipio Lib. i. de *Gentilis*) *inquirere, praesertim per Astrologos, Capitale est, neque hoc solum* Conjurati-
sed etiam de ea dubitare, vel desperare, pro Crimine Laesae Majestatis habitum est, si ea desperatio indicis esset aliquibus patefacta. one.

Question 3. *Whether he, that is non Compos Mentis, can commit High Treason, within the Statute of 25 E. 3?*

It is answered, That by the Ancient Law of this Kingdom, If a Mad Man had killed, or offered to kill the King it was Treason, for the King is *Caput et Salsus Reipublice, et à Capite bona valetudo transit* Co. lib. 4. Beverley's Case.
in

Co. 3. Inst.
f. 6. Co.
Litt. 247.
b.

in *Omnes*. And for this Reason the Persons of Kings are so sacred, that none may offer them Violence without being Guilty of High Treason; *Et pereat unus, ne pereant omnes*: But now by the Statute of 35. Ed. 3. and by force of the words, *Fact Compasser, ou Imaginer la mort*; He that is *Non compos Mentis*, and totally deprived of all Compassings and Imaginations, cannot commit High Treason by Compassing or Imagining the Death of the King; For *Furiosus solo furore punitur*, And *Furor*, or Madness in the Civil Law, is *Continuata mentis Alienatio, qua quis omni intellectu caret*.

Coke.

If a Man commit Treason, and confesseth the same, or be thereof otherwise Convicted, If afterward he become *De non sane memorie*, he shall not be called to answer. Or if after Judgment he become Mad, he shall not be executed, for it cannot be an Example to others.

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Note, by the Statute of 33 H. 8. 33 H. 8. c. 20.
 It was provided, That if a man, being *Compos Mentis* commit High Treason, and after accusation fall to Madness that he might be tried in his Absence, and suffer death, as if he were of perfect Memory; It was further provided by the same Act, That if a man attainted of Treason became Mad, that notwithstanding he should be executed; but this Law is since repealed, by the 1. et 2. Ph. and Mar. c. 10.

The Civil Law goes hand in hand with the Law of England, in matters Criminal, *Culpam non admittit, qui sua mentis non est.*

Si per furorem aliquis parentem occiderit, impunitus erit, ut divi fratres rescripserunt super eo, qui per furorem Matrem necaverat. Nam sufficere, furore ipso eum puniri, diligentiusque custodiendum esse, aut etiam vinculis coercendum.

D. 48. 9. 9.
2.

Sane

D. 1. 18.

13. de offi-
cio Præsidis.

*Sanè excutiendum Divi fratres p-
taverunt in persona ejus qui parricidi-
um admisisset, an verò re vera compos-
mentis non esset : ut si simulasset,
plecteretur si fureret, in Carcere conti-
neretur.*

Question 4. *Whether a nomi-
native King be a King with-
in the Statute of 25 E. 3?*

Coke.

I Answer, That the word [King]
is to be understood of King Reg-
nant, and not of one, that hath
but the name of a King, as it was
resolved in the Case of King *Phi-
lip of Spain*, who married Queen
Mary, and was but a nominative
King, for Queen *Mary* had the Of-
fice and Dignity of the King ; so
as she that wanted the name of a
King, but had the Office and Digi-
nity was within this Act of 25 E.
3. And he that had the name, and
not the Office and Dignity of the
King,

King, was not within it: And therefore an Act was made that to 1 & 2 Ph.
Compasse, or Imagin the death of & M.C. 10.
King Philip, during his Marriage
with the Queen, was Treason.

Question 3. *Whether a King
de facto, and not de Jure, be
within the purview of the
Statute of 25 E. 3?*

I answer, That the same Law *vide 11 H.*
is to be understood of a King in *7-1.*
Possession of the Crown, and King- *Coke.*
dome: for if there be a King Reg-
nant in possession, although he be a
King *de facto*, and not *de jure*, yet
he is *Seignior le Roy* within the
purview of the same Statute. And
the other that hath Right, and is
out of Possession, is not within this
Act.

Question 6. *Whether he to whom the Crown doth devolve, be a King within this Act before Coronation.*

Coke.

Hill. 1.

Jac. in the
Case of
Watson and
Clerk.

It is answered, That if the Crown descend to the Rightful Heir, he is King before Coronation: for by the Law of England, there is no *Interregnum*; And Coronation, or Inauguration is but an Ornament, or Solemnity of Honour, to shew and not to make the King, and so it was resolved by all the Judges in the Case of *Watson and Clerk* Seminary Priests; For by the Law, there is a King, in whose name the Laws are to be executed, otherwise Justice should fail.

Question

Question 7. *Whether the Husband of a Queen Regnant, or the Wife of a King Regnant, guilty of Compassing, be punishable by the Act of 25 E. 3?*

It is answered; If a Man marry a Queen Regnant, and he Compass the death of the Queen, his Wife, and declare the same by Overt-Act, he is guilty of *Treason*, and punishable by this Act, for to this, and so many other purposes, she is a distinct Person, by the Common Law. And so if the Wife of a King Regnant, compass the death of her Husband, and declare the same by Overt-Act, she is guilty of *High Treason*, and punishable by this Act.

Question 8. *Whether an Alien born, and here residing, can commit Treason within the 25 E. 3?*

Dyer 144.
Co. lib. 7.
Calvin's
Case Co.
Litt. f.
179. a.

I answer, That all Aliens born who are within the Realm of England, &c. And whose Sovereigns are in Amity with our King, are within the Protection of our King, and do owe a Topical, or Local obedience to the King, are within this Act; And if they commit Treason against the King, they shall be punished as Traitors. And the Indictment shall say, *Contra Iuramentum suum debitum.*

Question

Question 9. *Whether the killing of a Foreign Ambassadour residing here, be High Treason within 25 E. 3?*

It is answered, That the Statute of 25 E. 3. having restrained the Compelling, &c. Of the death of the King, Queen, and Prince, it came to pass after the making of this same Law, that in the 3d. of R. 2. Two Citizens of London, *John Kerby Mercer*, and *John Algore Grocer*, conceiving Malice against *John Imperial Genevois* of *S. Mary in Genoa*, that came as Ambassadour from the state of *Genoa* to the King (under the King's Letters of safe Conduct) for that the said *John Imperial*, had obtained a Monopoly to furnish this Land of all such wares, as came from the *Levant*, so plentifully as was to be had in all the West parts of Christendom, the said *John Imperial* was killed by them. And

Rot. Parl.
3. R. 2.
nu. 18.
Coke.

although the said Ambassador, and was an Ambassadour under the King's safe Conduct, and the killing of him was just cause of War, yet the killing of him was no Treason, because it was not under any of the Heads of the said Statute, until it was at that time declared by Parliament in *hæc verba*, &c. And accordingly the said Kerby and *Algore* were Attainted of High Treason in *Banco Regis Hill*. 3.R. 2. But this Declaration is taken away by the Statute of 1. *Marie*.

Question 10. *The killing of the King's Ambassadour, whether it be within the Statute of 25 E. 3?*

32 *Aff. pl.*
49. *Mort.*
diu Ambr.
le Roy.

I answer; In the 22 of E. 3. which was about 3 years before the making of this Act, one *John at Hill* had Murdered *A. de Walton*, the Kings Ambassadour. This was adjudged High Treason, for which he

he was Drawn, Hanged and Quartered. But by this Act of 25 E. Coke. 3. it is restrained to the death of our Lord, the King, and therefore *Pro-rex* is not within this Statute.

Question II. *Whether a Foreign Ambassador residing here, and Compassing the death of our King, can be punishable for it?*

It is answered. That an Ambassador, which raiseth Rebellion (and in every Rebellion there's a Machination of the Prince's death) against the Prince to whom he is sent, hath by the Law of Nations, and by the Civil Law of the Romans forfeited all the Priviledges of an Ambassadour, and is to be subjected to punishment; and this was the opinion of Doctor Lewis, Doctor Dale, Doctor Drury, Dr. Aubrey, and Doctor Jones, most Learned Civilians.

*Camden's
Eliz. Anno
Domini
1570.*

14 Eliz.
Coke.

In the Bishop of Rosses case the Question being, *An legatus, qui rebellionem contra Principem, ad quem legatus concitat, Legati privilegiis gaudeat, et non ut hostis pœnis subja- ceat.* And it was resolved, that he had lost the Priviledge of an Ambassadour, and was subject to punishment.

eo. 4. Inst.
153.

If a Foreign Ambassadour (be- ing *prorox*) committeth here any Crime, which is *contra jus Gentium*, as Treason, Felony, Adultery, or any other Crime which is against the Law of Nations, he loseth the Priviledge, and dignity of an Am- bassadour, as unworthy of so high a place, and may be punished here as any other private Alien and not to be remanded to his Sove- raign but of Courtesie. And so of Contracts, that be good *jure Gentium* he must answer here: But if any thing be *Malum prohibitum*, by any Act of Parliament, private Law or Custome of this Realm, which

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25

which is not *Malum in se* pure *Gentium*, nor *Contra jus Gentium*, an Ambassador residing here, shall not be bound by any of them: but otherwise it is of the Subjects of either Kingdom, *vide* more *Bulstrode's Reports*, 3 part. The King *vers. March*.

Question 12. *Whether an Ambassador ought to reveal Treason against a Prince.*

It is answered, That when my Lord Burghley, had lightly reproved the French Ambassador as Conscious, or Accessary to the Plotting of the Queen's death, both by his own words, and Trapp's his Secretaries Confession: He answered, If he had been Accessary, yet seeing he was Ambassador, he ought not to make discovery thereof to any but to the King his Master only. When my Lord Burghley reply-

Cambden's
Eliz. Anna
Domini
1587,
1588.

replied, That if it be not for an Ambassadour to make such discovery, when a Prince his Life, is by wicked Practise endangered, (which notwithstanding is controverted,) yet was it the duty of a Christian to repulse such Injuries, for the safety not only of a Prince, but also of any Christian: This he stoutly denied, and withall he told how a *French* Ambassadour, not long since in *Spain*, having knowledge of the Practise against the King of *Spain's* Life, discovered it not to the King of *Spain*, but to the King his Master, and was therefore commended by the King and his Council; But my Lord *Burghley* gravely admonished him to beware, how he committed Treason any more, or forgot the Duty of an Ambassadour, and the Queen's Clemency, who would not by punishing a bad Ambassadour hurt the Good; And that he was not exempted from Guiltiness of the Offence, though he escaped the punishment.

Question 13. *Whether a Foreign Prince by his dwelling and residing here, can commit Treason?*

It is answered; When *Mary* Cambden's
Queen of Scots, being Arraigned Eliz. Anno.
 for High Treason, was sentenced 1586.
 to death by the Judgment of the
English Delegates or *Commissioners*, some indifferent Censurers
 there were, who thought she was
 somewhat sharply dealt withall; For
 that she was a Free, and Absolute
 Princess, under the superior Com-
 mand of God alone, and therefore
 she could not commit Treason, be-
 cause she was no Subject; And
 Princes of Equal Degree have no
 Power, or Sovereignty, one over
 another; And thereupon the Sen-
 tence of the Emperour against *Ro-
 bert King of Sicily*, was disannul-
 led, because he was no Subject of
 the Empire. Others there were,
 which thought her a Subject, tho
 not.

not Originary, yet Temporary, because Two absolute Princes in respect of Regal Authority, cannot be in one Kingdom at once. That it was a received opinion of the Learned in the Law, A King without his own Dominions (except it be in an expedition of War,) is but a private Man; And therefore can neither confer, nor exercise Royalties. Moreover, that she by her Offence lost her meer; and absolute Sovereignty; And that such as are Subjects, by their dwelling only, and place of abode, might commit Treason. That a Prince hath a power, or Jurisdiction, over another Prince, that is his Equal, as often as any hath subjected himself, under the Judgment of his Equal. That the Pope had repealed the Emperor's Sentence against Robert King of Sicily, because the Fact was committed not within the Emperour's, but within the Pope's Territories. That many Kings have been condemned, and put to death, namely *Rhesaporis* King

King of Thrace, by Tiberius, Licinius, and Maximianus by Constantine the Great. And to conclude, That there was extant no great Example, which did not carry with it some Colour of Injustice.

Question 14. and last shall be, upon that dangerous, and desperate Error (you may call it a Jesuitisme) of the Spencers (viz.) That Homage, and Oath of Ligeance, was more by reason of the King's Crown (that is of his Politick Capacity,) then by reason of the Person of the King; To which of the Capacities, viz. to Natural, or Politick, Ligeance is due?

I answer, That it is due to the Natural Capacity of the King, and is not due to the Politick Capacity only, that is, To his Crown or King-

Co Lib. 7.
Calvin's
Case fol.
10. a.

Kingdom, distinct from his Natural Capacity; And therefore in all Indictments of Treason, when any does intend, or Compass *mortem et destructionem Domini Regis*, (which must needs be understood of his natural Body, his body Politick being Immortal, and not Subject to death,) the Indictment doth conclude, *Contra Ligeantiam suam debitam*, by which it plainly appears, That *Ligeance is due* to the natural body of the King, that Capacity being (indeed) the only subject capable thereof.

Hitherto of Compassings relating to the King, I come to those that shall be against the Queen, and Prince.

25 E. 3. 6.
2.

If any do Compass, or Imagine the Death of the Queen or Prince (the King's Eldest Son) and declare it, by some Overt-Act, this Intent is High Treason, as in the Case of the King himself.

In relation to the Queen, and Prince these Queries may well be propounded;

Question 1. *Whether the Compassing of the death of the Queen Dowager, be within the Statute of 25 E. 3.*

It is answered, That it is not, The word *Compaign*, (which is all one with Confort, or Wife) was used in the said Statute; to shew, How *Compassing*, &c. must be, during the Marriage with the King; for after the King's death, she is not *sa Compaigne*, and therefore it extendeth not to a Queen Dowager.

Coke.

Quest.

Question 2. *Whether the Heir
apparent to the Crown, ought
to be always the first begotten
Son, within the Statute of
25 E. 3?*

Coke.

It is answered, That by this
same Act it is restrained to the
Prince, the King's Son, being Heir
Apparent to the Crown for the
time being, and he need not be the
First begotten Son, for the Second
after the Decease of the First begot-
ten without Issue, is [*Fitz-Eigne*]
within this Statute, & sic de Carr-

Quest.

Question 3. *Whether a Collateral Heir apparent be within the Statute of 25 E. 3?*

I answer, That if the Heir apparent to the Crown, be a Collateral Heir Apparent, he is not within this Statute, until it be declared by Parliament, as it was in the Duke of York's Case. Roger Mortimer Earl of March was in Anno Domini 1487. (11 R. 2.) proclaimed Heir Apparent; And so was John de la Poole, Earl of Lincoln, by R. 2. And Henry Marquess of Exeter. by King H. 8. And Anno 39 H. 6. Richard Duke of York was Proclaimed Heir Apparent: But none of these, or the like, are within the Purview of this Statute,

Coke.

Note by the way, That Queen Elizabeth could never be persuaded to have a Successor designed, or declared; And for these Reasons.

vide Cambden's Eliz. Anno 1561. Anno 1566.

1. Be-

The Latour for the

1. Because to those that are in place of Government, Successors are always suspected, and envied; the People (such is their inconstancy,) in a Loathing of Things present, do look to the Sun-Rising, and leave the Sun Setting; and the designed successors themselves are not able to limit their own, and others wicked Hopes, within the Bounds of Equity, and Reason. So as if the Queen had confirmed to another the Succession, she should quite cut off, her own security, and in her Life-time, lay her own winding-sheet, before her Eyes, yea, make her own grave, while she liveth, and looketh on.

2. Because the designation in *England* had ever been the undoing of them that had been designed. For *Roger Mortimer* Earl of *March*, designed Heir to the Crown by King *R. 2.* was in short time extinct. His Son *Edmund* for no other Cause was shut up in Prison in *Ireland* full
 Twen-

Twenty Years, and there languished to death. *John De-la-Poole*, Earl of *Lincoln*, designed Successor by *R. 3d*, when his Son was dead was always suspected by *H. 7.* and in the end attempting new Matters was slain in the Field, and his Brother *Edmond* beheaded under *H. 8.* But these things may seem beside the purpose: And therefore we having handled Compassings, and Imaginations, will proceed to the Residue, which concern Acts, and Deeds.

2. Of Violation.

If a Man do violate the King's Companion, or the King's Eldest Daughter unmarried, or the Wife of the King's Eldest Son, and Heir, it is adjudged High Treason. 25 E. 3. c.

Upon this Branch of the Statute, these Particularities following, are worthy of observance,

1. That

1. That *violare* is in this Statute taken for *carnaliter cognoscere*, carnally to know.

2. That this same *violation* is no Treason, unless it be done during the Marriage with the King, and extendeth not to a Queen Dowager.

3. That if the Wife of the King doth yield, and consent to him, that committeth this Treason, It is Treason in her.

4. That this same Law extends to the Wife of the Prince, during Coverture between them, and not to a Dowager.

5. That if the Princess yield and consent unto him, that commits this Treason, It is Treason in her.

6. That

6. That this Statute intendeth the Eldest Daughter, not married, at the time of the violation, albeit there had been an Elder daughter then she, who is dead without Issue.

7. That the Reason, why the Eldest daughter only is mentioned in the Statute, is for that for default of Issue Male, she only is inheritable to the Imperial Crown of England.

3. *Of Levying War against the King.*

If a Man do levy, war against our Lord the King in his Realm, It is High Treason. And so it was. at the Common Law; for no Subject can levy war, without Authority from the King, because to his Imperial Diadem it only appertaineth.

25 E. 3. c. 2.

Le Roy (sayes Fitzherbert) de droit

FNB f. 113 a.

*droit doit s'aver, et defender son
Realme vers Enemier, &c.*

Co. Lib. 2.
wiseman's
Case.

It has been resolved, That if a Man should in Consideration, that the King is the Head of the Common-wealth, and hath the Care, and Province as well to preserve Peace, as for to repel Hostility; Yet 'tis no good Consideration, to raise an use to the King; because Kings *ex Officio*, ought to govern their Subjects in Peace, and Tranquillity, which is implied in the Word [King.] With the Laws of this our Realm do the Laws Imperial in this poynt joyn hands.

The Con-
stitution
of Valenti-
an, and
Valens.

*Nulli proفسus (say the Emperors)
nobis insciis, atque inconsultis quo-
rum libet armorum movendorum copia
tribuatur.*

Zouchzus.

*Ad militiam auctoritate Impera-
toris milites admittuntur. Arms
ferre nisi militanti non licet.* Which

Augusti-
nus.

is seconded by St. Austin: *Ordo na-
turalis mortalium paci accommodatus*
hoc

hoc poscit, ut suscipiendi belli auctoritas, atque Consilium penes principes sit. Thus much in Proofs of his Majesty's Prerogative Royal; And now I shall propose several Resolutions on this Branch of the Statute of 25 E. 3.

A Compassing, or Conspiracy to Levy War is no Treason; for there must be a Levying of War *in fact*: But if many conspire to Levy War, and some of them do the same according to the Conspiracy, this is *High Treason* in all; for in Treason all be Principals, and War is Levied: And so it was declared at the Arraignment of *Sr. Nicholas Throgmorton.*

1. Mar.
Dyer 98.
6. Throgmorton's
case. Co. 3.
Inst. f. 9.

If any Levy War to expulse Coke. strangers, to deliver Men out of Prisons, to remove Counsellors, or against any Statute, or to any other end, pretending Reformation of their own Heads, without Authority, or Warrant from his Majesty; This is Levying of War against him;
D because

because they take upon them Royal Authority, which is against the King. And indeed there neither is, nor ever was, any Government in the World, Good or Bad, Just, or Unjust, that did ever permit Subjects, without Authority from it, to take up Arms.

Coke.

If any presume with Strength, and Weapons, Invasive, and Defensive, to hold, and defend a Castle, or Fort against the King, and his Power, this is a Levying of War within this Branch of the Statute.

Coke.

It was resolved by all the Judges of *England* in the Reign of *H. 8.* That an Insurrection against the Statute of Labourers, for the Inhaunfing of Salaries, and Wages, was a Levying of War against the King; because it was generally against the King's Laws, and the Offenders took upon them the Reformation thereof; which Subjects by gathering of Power ought not to do.

One

Safety of the Crown.

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One *Thomas Bensted*, was Indicted, and Arraigned, before special Commissioners of Oyer, and Terminer in *Southmark*, wherein all the Justices, and Barons were in Commission, and present; upon conference, with all the Judges, It was resolved, That going to *Lambeth House*, in Warlike manner, to surprize the Arch Bishop, who was a Privy Counsellor (it being with Drums and a Multitude (as the Indictment said) to the Number of 300 persons) was Treason. It was at the same time resolved by ten of the said Justices *Seriatim*, that the breaking of a Prison, wherein Traytors be in durance, and causing them to escape, was Treason.

Cro.3.p.
Thomas
Bensted's
Case. fol.
583.

I shall conclude this kind of Learning relating to the Levying of War, with these two following Queries.

1. *Whether there be any Diversity between Levying of War, and Com-*

D 2

mitting

mitting of a great Ryot, a Rout or unlawful Assembly ?

Coke.

It is answered, That there is a difference: For example, If three, or four, or more, do rise to burne, or put down an Inclosure in *Dale*, which the Lord of the Manner of *Dale* hath made there, in that particular place; This, or the like is a Ryot, a Rout, or an unlawful Assembly, and no Treason: But if they had risen of purpose to alter Religion established within the Realm, or to go from Town to Town generally, and to cast down Inclosures, this is a Levying of War (though there be no great number of the Conspirators) within the purview of the Statute of 25. E. 3. because the pretence is publick and general, and not private in particular. And so it was resolved in the Case of *Richard Bradshaw*, Miller; *Robert Burton*, Mason, and others of *Oxfordshire*.

Pasch. 39.
Eliz. by all
the Judges
of *England*.

2. Whether a man *pro timore Mortis*, administering, and yielding victuals to those, that be in open War against the King, be a Traytor within the Act of 25 E. 3?

It is answered, That they are not. And therefore it was specially found, that divers of the King's Subjects did minister, and yield Victuals to Sir John Old-Castle, Knight, and others, being in open War against the King, and that they were in Company with them in *aperto bello*; but all this was found to be *pro timore mortis*, *Et quod recesserunt quam citò potuerunt*, And it was adjudged to be no Treason, because it was for fear of death. *Et actus non facit Reum, nisi mens sit Rea*. Wherefore this in them was no Levying of War against the King within the Statute of 25 E. 3.

Coke.

4. *Of Adhering to the King's Enemies.*25 E. 3.
6. 2.

If a Man be adherent to the King's Enemies in his Realm, giving to them Aid, and Comfort in the Realm or elsewhere, this is declared Treason.

Coke.

A delivery or Surrender of the King's Castles, or Forts, by the King's Captain thereof, to the King's Enemy within the Realm or without, for Reward, &c. is an adhering to the King's Enemy, and consequently Treason, declared by the 25 E. 3.

13 Eliz.
Dyer f. 298.
Co. 3. Inst.
f. 10. & 11.vide Br.
nu. 33 H.
4. 61.

A. is out of the Realm, at the time of a Rebellion in *England*, and one of the Rebels flies out of *England*, whom *A.* knowing his Treason, doth Aid, or Succour, this is no Treason in *A.* according to the Statute of 25 E. 3. Because 'twas agreed by all the Judges, That none but an *Alien* born, can be taken for an

an Enemy to the Prince and Realm
And therefore the Subjects of the King, though they be in open War, or Rebellion against the King, yet are they not the King's Enemies; but Traytors, and Enemies be those that be born out of the King's Allegiance: Examples will Illustrate this diversity; As,

If a Subject joyn with a Foreign Enemy, and come into *England* with him, he shall not be taken Prisoner here, and Ransomed, or proceeded with as an Enemy shall; but he shall be taken as a Traytor to the King.

An Enemy coming in open Hostility into *England*, and taken, shall be either Executed by Marshal-Law, or Ransomed; for he cannot be indicted of *Treason*, for that he was never within the Protection or Ligeance of the King. And the Indictment of *Treason* saith, *Contra Ligeantiam suam debitam.*

Dyer f.
145. a. Co.
Lib. 7.
calvin's
Case.

14 Eliz.
Co. 3 Inst.
f. 11. Co.
4. Inst. f.
152.

In the Duke of Norfolk's Case, Hill. 14 Eliz. the Question was, Whether the Lord *Herise*, and other Subjects of the *Scottish* King, that without his Assent had wasted, and burnt divers Towns here in *England*, and Proclaimed Enemies, were Enemies in Law within the Stat. of 25 E. 3. And resolved that they were.

Camden's
Eliz. Anno
1572.
Dyer f.
300. b.

To Conclude, a Consultation was had concerning *John Story*, Doctor of Law, the Duke of *Alva's* Searcher, whether he being an *English* Man born, who in *Brabant* had consulted with a Foreign Prince about invading his Countrey, and had shewed the means of *Invasion*? The Skillfullest Lawyers affirmed, that he might.

Whereupon he was Arraigned, and being to be Charged with High Treason, for that he had consulted with one *Prestall*, a Man most addicted to Magical Illusions, against his

his Prince's Life, for that he had conspired the destruction of her, and the King of Scots, had cursed her daily in his Grace at Board, and shewed to the Duke of *Alva*, his Secretary, the means to invade *England*, raise *Ireland* into Rebellion, and excite the *Scots* to break into *England* all at once: He refused to submit himself to Tryal, and to the Laws of *England*, and affirmed that the Judges had no Power over him, for that he was not a sworn Subject to the Queen of *England*, but to the King of *Spain*. But he was condemned, according to the ordinary Form of *Nihil dicit*, and suffered the death of a Traytor; for that, *nemo patriam in qua natus est, exuere, nec Ligeantia debitum ejurare possit*, no man can shake off his Country, wherein he is born, nor abjure his Native Soile, or his Prince at his pleasure. *Co. Litt. 129. a. 13. Eliz. Dyer 300. b. Doctor Storie's Case, Co. Lib. 7. Calvin's Case.* With our Law does concur the Law Imperial.

Cod. 10. 38. *Origine propria neminem posse voluntate sua eximere manifestum est.*

D. 50. 1. 6. *Adsumptio originis, quæ non est, veritatem naturæ non peremit. Errore enim veritas non amittitur, nec mendacio dicentis se esse, unde non fit, deponitur. Neque recusando quis patriam, ex qua oriundus est, neque mentiendo de ea, quam non habet, veritatem mutare potest.*

Gothofredus. *Origine se Tyrium esse dicens per errorem, cum sit Campanus, veram suam originem non amittit.*

5. Of Counterfeiting the Great or Privy-Seal.

25 E. 3. 6. *If a Man Counterfeit the King's Great or Privy-Seal, 'tis declared High Treason.*

Coke. *All our antient Authors, Bracton, Britton, Fleta, and the Mirror, agree, That to Counterfeit the Broad Seal, was High Treason by the Common*

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mon Law; and for this offence his Judgment was, to be drawn, hanged, and quartered, at the Common Law, as in other Cases of High Treason.

As to the Counterfeiting of the Seals, let the Reader take with him these two observations, *viz.*

1. That a Compassing, Intent, or going about to counterfeit the Great-Seal, is no Treason, but there must be an Actual Counterfeiting; And it must likewise be to the similitude, or Likeness of the King's Great-Seal; the words be, *Counterface le grand-Seale le Roy.* Coke.

2. That this Statute naming the Great, and Privy-Seal, the forging, and Counterfeiting the Privy-Signet, or of the Sign Manuel, is not within the Statute of 25 E. 3. But by the Statute of 1 Mar. it is made High Treason in both Cases. Coke.

3. That

Coke.

3. That though in the Act of 25 E. 3. There is no mention made of Ayders, and Consenters to this *Fausonnery*, yet they are within the Purview thereof; And the Reason is, because there be no Accessaries in Treasons. Of the counterfeiting of these before mentioned Seals, *vide more in Rolls his Reports*, pars 2d. *Robinson's Case*.

6. Of Counterfeiting the King's Money.

25 E. 3.
c. 2.

If a Man counterfeits the Kings Money, It is High Treason. For the better understanding of this same Branch, take these particularities, *viz.*

Coke.

1. That the Forging of the King's Coin, is High Treason, without utterance of it; for by this Act the Counterfeiting is made High Treason.

2. That

2. That Clipping, Washing, and Filing of the Money of this Realm, is no Counterfeiting within the 25 E. 3. And therefore, being a like Case, it was declared by Parliament to be High Treason; but that Act being repealed by 1 Mar. The Statute of the 5 Eliz. c. 11. hath declared, That Clipping, Washing, Rounding, or Filing, for wicked Lucre and gain, &c. To be High Treason. And by the Statute of 18 Eliz. Impairing, Diminishing, Balfifying, Scaling or Lightning, the King's Money, &c. is High Treason.

3. That the Stat. of 25 E. 3. extends only to the Kings Money coyned within this Realm. And therefore after this same Statute, If a man had counterfeited the money of another Kingdome, though it were Currant within this Realm, it was no Treason, untill it was so declared by Parliament in Anno 1 Maria, and in Anno 1 & 2, Ph. & Mar,

Coke.

Mar. and the said Acts of 5 *Eliz.* and 18 *Eliz.* do extend to Foreign Coinc Currant within this Realm.

Coke.

4. That if any do Counterfeit the King's Coin, contrary to this Statute of 25 *E. 3.* he shall have the punishment of his Body, but as in Case of petit Treason, that is, to be drawn, and hanged till he be dead; but the Forfeiture of his Lands is, as in other Cases of High Treason: for this Statute is but a declaration of the Common Law; And the Reason of his Corporal punishment is, for that in this Case he was only drawn and hanged at the Common Law; but a woman in that Case was to be burnt. *vide Cro. 3. part, Morgan's Case.*

Coke.

5. That this Statute of 25 *E. 3.* making no mention of the Judgment, such Judgment therefore as was at the Common Law, either in case of High Treason, or petit Treason, must be given.

6. That:

6. That if one be attainted for diminishing of the King's Coine, upon any of the Statutes, made in Queen *Marie's* time, or Queen *Elix.* time, because 'tis High Treason newly made, the offender shall have Judgment, as in the Case of High Treason. Coke.

Note, *Hill. 25. and 26. Car. 2.* It was ruled otherwise by *Hales* in the Case of *Lewis Bolu* aliàs *Mempo*, attainted for Coining and Clipping. And it was said by him, that all the Judges agreed, that the same Judgment shall be for Clipping, as for Counterfeiting. But *Bolu*, Mich. 1674. 26. Car. 2. Pleaded his Pardon.

7. Of

7. Of bringing into this Realm of Counterfeit Money to the similitude of the King's Coin.

25 E. 3.
c. 2.

If a man bring false Money into this Realm, Counterfeit to the money of England, knowing the Money to be false, to Merchandise or make payment, in deceit of our Lord the King, and of his People, It is High Treason.

Coke.

The better to understand this same Branch six things are worthy of observation, viz.

1. That the bringing in of Counterfeit Money, and not the Counterfeiting is expressed in this word [Apport]

Coke.

2. That it must be brought from a Foreign Nation, and not from Ireland, or other Place, belonging to, or being a Member of the Crown of England, and so it hath been resolved.

3, That

3. That it must be to the similitude of the money of *England*. Coke.

4. That the bringer of it into this Realm, must know it to be Counterfeit. Coke.

5. That uttering of false Money in *England*, though the party know it to be false, and Counterfeit, to the Likeness of the Money of *England*, is no Treason within the Statute of 25 E. 3. unless he brought it from a Foreign Nation. Coke.

6. And lastly, He must Merchandize therewith, or make payment thereof.

8. And lastly. Of killing and Murdering Persons, in their Place, doing their Offices.

25.E.3.C.
2.

If a Man slay the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear, and determine, being in their place doing their Offices, It is High Treason.

That the Reader may the more easily apprehend this Branch of the Statute, let him take these following Remarks, viz.

Coke.

1. That albeit one intend to kill any of these Officers before named in their place, and doing their Office, and thereupon strike or wound any of them, this is no Treason; For to make it Treason, Death must follow.

Coke.

2. This Act extends only to the Persons here particularly named, and to no other, and therefore this same Statute is not extensive to the Courts of the

Lord

*Lord Steward
Lord Constable and Marshal,
Lord Admiral,
Nor to any Ecclesiastical Court,
Nor to the High Court of Parliament.*

But in all these Cases it is wilful Murder, for the Law implyeth Malice.

Thus have I shewed the Reader the several Treasons comprehended in the Statute of 25. E. 3. I go on to the third matter by me intended, a Prospect of the Treasons, so made by Statutes, since the 25. E. 3. which I call *Novel Treasons*.

*3. Of new Treasons Enacted
since. 25. E. 3.*

These Treasons I shall divide into two sorts, into Treasons, that are still in Force, and Treasons that are not so, which are either Expired, or Repealed.

First,

*First, Of Treasons made by
Acts of Parliament that are
now in Force.*

1.H.6.c.5. By 1. H.5. It is enacted, That the Breaking of a Prison, wherein Traytors are in durance, and causing them to escape, is High Treason, although the Parties do not know there are any Traytors there.

1.Mar.c.6. To Forge, or Counterfeit the Privy-Signet or Sign Manuel, is made Treason.

1.Eliz.c.1. None shall maintain the Jurisdiction of any Foreign Prince, or Potentate in the Queens Dominions, for the third Offence, he is Guilty of High Treason.

1.Eliz.c.1. Those, that refuse the Oath of Supremacy, upon second Tender, or were found formerly convicted of maintaining the Jurisdiction of the

the Pope, or See of Rome and do commit the like Offence: the second time, both they, and their Accessaries, shall suffer, as in Case of High Treason.

All that obtain, or put in ure any Bull of Absolution, or Reconciliati-
on from the Church of Rome, or
absolve, or be absolved thereby, both
they, and their Accessaries before
the Fact, shall be adjudged Guilty
of High Treason, to the Queen and
Realm. 13. Eliz. c. 1.

It is enacted, that Clipping, Wash-
ing, Rounding, or Filing for
wicked Lucre, and Gain, is High
Treason. 5. Eliz. c. 11.

It is High Treason to bring into
this Realm Counterfeit Money, like
the Coin of other Realms, currant
in Payment in this Kingdom, know-
ing it to be so Counterfeit. 1 & 2 Ph. & Mar. c. 11.

It is declared, That if any person
for wicked Lucre, or Gains sake,
shall 18. Eliz. c. 1.

shall by any Art whatsoever Impair, Diminish, Falsify, Scale, or Lighten the Queens Money, it is High Treason.

23. *Eliz. 3.*

1.

It is H. Treason to have, or pretend to have Power, or to put in Practice to absolve, persuade, or withdraw any person within the Queen's Dominions from their natural Obedience to the Queen and her Successors, or to withdraw them for the Intent from Religion; And they also, who shall be so withdrawn willingly, together with their Procurers, and Counsellors shall be Guilty of the same Offence.

27 *Eliz. c.*

2.

All Jesuits, Seminary Priests, or any Ecclesiastical persons born within the Queen's Dominions or ordained, or made such, by the pretended Jurisdiction of the See of *Rome*, which come into or remain in any of the said Queen's Dominions, shall be adjudged Guilty of High Treason.

All

All persons brought up in Seminaries, beyond Sea, and not as yet in Orders, which do not within six Monthes, after Proclamation made in *London* (in that behalfe) return into this Realm, and within two dayes, after their Return, before the Bishops of the Diocess, or two Justices of Peace of the County, where they Arrive, submit themselves to the Queen and her Laws, and take the Oath of Supremacy, they shall be adjudged Guilty of High Treason.

27. *Eliz. c.*
7.

4. To absolve, or withdraw the King's Subjects, from their natural Obedience, to reconcile them to the See of *Rome*, or to move them to promise it &c. Or to be absolved, withdrawn, reconciled, or make promise, is High Treason.

1 *Jac. c. 4.*

It is enacted, That if any person during the natural Life of his now Majesty, within the Realm or without, compass, imagin, invent, devise

13. *Car. 2.*
nunc Regis
1.

devise, or intend Death, or Destruction, or any Bodily harm, tending to Death, or Destruction, Maim, or wounding, Imprisonment or Restraint of the Person of his Majesty, or to deprive or depose him, from the Style, Honour or Kingly Name of the Imperial Crown of this Realm, &c. Or to move, or stir any Foreignour with Force to Invade the Realm, &c. And such Compassings, Imaginations, Inventions, Devises, or Intentions, or any of them shall Express, Utter, or Declare by any Printing, Writing, Preaching, or Malitious, and advised speaking, being legally Convicted by the Testimony of two Witnesses, Then every such person, so as aforesaid, offending, shall be adjudged to be a Traytor, and shall suffer the Pains of Death, and also lose and forfeit as in Cases of High Treason.

Thus much of Novel Treasons made so by Acts of Parliament, and still in Force.

Secondly,

*Secondly, Of Treasons, made
so, since the Statute 25.E.3,
and not now in Force.*

It was declared by 3. H. 5 That 3.H.5.c.6.
Clipping, Washing, and Filing of
the Money of this Realm should be
High Treason.

It was enacted, That if any Per-
son by Word, or Writing, Pra-
ctise, or Attempt any Bodily Harm
to the King, the Queen, or their
Heirs apparent, to deprive them, or
any of them, of their Dignity, Ti-
tle or Name of their Royal Estates,
or That the King should be an Here-
tick, Schismatick, Tyrant, Infir-
del, or Usurper of the Crown, &c
That every such person so offending
should be adjudged Traytors.

Every Ecclesiastical, and Lay- 28.H.8.c.
Officer shall be sworn, to renounce 10,
the Bishop of Rome, and his Au-
thority, and to resist it to his Power,
E and

The Laws for the

and to repate any Oath taken, in maintenance of the said Bishop, or his Authority to be void, and the Refusing of the said Oath, adjudged High Treason.

1 & 2 Ph.
& Mar. c.
9.

If any Person shall pray, or desire that God will shorten the Queen's dayes, or take her out of the way, or any such Malitious Prayer, amounting to the same effect, He, his Procurators, and Abettors, shall be adjudged Traytors. *ex p.*

1 & 2 Ph.
& Mar. c.
10.

High Treason to Compass the death of the King, or the Queen: or to deprive either of them of the Style or Kingly Honour of this Realm: or to affirm, that any other then they, and the Heirs of her Body ought to be King or Queen. *ex p.*

1 Eliz. c.
5.

If any Person shall Compass or Imagine to deprive the Queen, or the Heirs of her body to be begotten, being King or Queen of this Realm, from the Style, or Kingly name

name of the Crown of this Realm; or to destroy the Queen or any the Heirs of her body, being King or Queen: or to Levy War against the Queen, or any of the Heirs of her body within her Dominions: or to depose the Queen, &c. from the Imperial Crown of this Realm, and the same Imagination shall utter, by open words, &c. Or shall publish, or directly say, That the Queen during her Life, is not, or ought not to be Queen: or that after her death, the Heirs of her body, ought not to be King or Queen, or that any other Person ought to be King or Queen, so long as any of the Heirs of their Body shall be in Life, &c. If any Person shall by Writing, Printing, Overt-Act or Deed, commit any of the offences aforesaid, it shall be adjudged High Treasons.

High Treason to intend Destruction or bodily Harm to the Queen, or to Levy War, or to move others to War, against her,

13 Eliz. 1.

or to affirm that the Queen ought not to enjoy the Crown, but some other Person, or to publish, That the Queen is an Heretick, Schismatick, Tyrant, Infidel, or Usurper of the Crown : or to claim Right to the Crown, or to usurpe the same during the Queens Life, or to affirm the Right in the Succession of the Crown in some other then the Queen, &c.

14 Eliz, c.
1.

Adjudged High Treason to withhold from the Queen, any of the Castles, Holds, &c. or any of her Ships, Artillery or Fortification of War, or to burn and destroy any of her Ships, or to Bar any Haven. Thus much of Treasons made by Acts of Parliament since the Statute of 25 E. 3. Some whereof are at this time in Force, some otherwise so either by Repeal or Expiration.

I shall proceed now to speak of Misprision of Treasons; and having done so, I will conclude this my Treatise with several Queries (with their

their Resolutions) relating to Treasons in general.

4. *Of Misprision of Treasons.*

Misprision of Treason is in our Law twofold, *Active* and *Passive* or if you will, 'tis either *Commissive* or *Omissive*.

1. Misprision of Treason *Passive*, Stamford or Omissive, is thus described; It is when a Person knoweth, that another hath committed High Treason, and will not discover it to the King, or to his Council, or to any Magistrate, but doth conceal the same, as for example,

To receive one, that hath counterfeited the Kings Coin, and comforting him, knowing him to have counterfeited the King's Coin, is a Misprision.

'Tis a Misprision of Treason to conceal a Bull from the Pope of Rome, or Absolution offered.

Stamford.
37 Consp.
Fitzh. 5.
35 H. 6.

Dyer f.
296. Co-
nyer's case

13 Eliz. c.
2.

5 & 6 E.
6. c. 11.

It is declared, that concealment or keeping secret of any High Treason shall be deemed, and taken only Misprision of Treason, and the Offender therein to forfeit, and suffer as in Cases of *Misprision of Treason*, as heretofore hath been used.

By the Common-Law, Concealment of Treason, was held Treason; as appeareth in the Case of the Lord Scroop, *Anno 3 H. 5.* and by *Brañon, Lib. 3. f. 118. b. & 119. a.*

And at this day the Proof is put upon the Prisoner, to evidence that he dissented to the Treason propounded; which if he make not out, he is then guilty of High Treason; for he cannot be an Accessary. This was Ruled in Sir *Everard Digby's Case*, in the *Powder-Treason*.

With our Common-Law, concur Foreign Authors; *Qui conscius est Conjuratōnis, & vel dolo dissimulat, vel negligentia transmittit, quod*

quod ad Regis Caput spectat, Majestatis quoque Reus Censetur. J. Looc. Nota Politica in Lib. 6. Q. Curt. Whence Isocrates in his Third Oration to Nicocles, sayes; Eadem pena dignos esse supprimentes hujusmodi facinus qua facinorosos.

2. *Misprision of Treason Active; and Commissive, is, when a man hath perpetrated some heynous Offence under the degree of High Treason: Examples will illustrate.*

If a man know Money to be Counterfeit, and bring the same out of *Ireland*, hither into *England*, and utter it in payment; this is a Misprision of Treason. Coke.

Forging or Counterfeiting of Foreign Money, which is not Current within the Realm, is Misprision of Treason, and the Offender shall forfeit, as for the Concealment of High Treason. 14 Eliz. c. 3.

In 40 Ass. It was holden, That
E 4 if

if a man take Wax, lawfully imprinted with the Great Seal, from one Patent, and fix it to another Writing, purporting a Grant from the King; this is a great Misprision.

37. H. 8.
Br. Treason.

A Chaplain had fixt an old Seal of a Patent, to a new Patent of Non-Residence; and this was holden to be a Misprision of Treason only, and no Counterfeiting the King's Seal. So it is holden in 37 H. 8. Br. Tit. *Treason*. But in 2 H. 4. 25. a. it is adjudged to the contrary; And *Stamford, Pl. Cor. f. 3. b.* cites it so; That it is Treason, and not Misprision of Treason only. And so it is holden at this day. *Vide Rolls his Reports, Pars secunda, Robinson's Case.*

Rott. Claus.
42 E. 3.
nu. 8. in
Cor.

In 42 E. 3. the Abbot of *Bruer* caused *Robert Rigge*, his Commoign, to rase a Charter of King R. 1. and put out the Mannor of *Frisfetruda*; and in place thereof put in *Esleghe*: And this was heard,
and

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and Sentenced before the King and Council in the Star-Chamber, as a great Offence, and Misprision; For if it had been (sayes Coke) High Treason, it should have had another Tryal.

The Compassings, or Imaginations against the King by Word, without any Overt-Act, is a High Misprision, but not Treason within the Statute of 25 E. 3. c. 2. *de Proditionibus*. Co.B.Inst. 140.

George Leake a Clerk of Chancery, joyned Two Clean Parchments, fit for Letters Patents, so close together with Mouth-Glue, as they were taken for one, the uppermost being very thin, and did put one Label through them both; then upon the uppermost he writ a true Patent, and got the Great Seal put to the Label, so the Labell on the Seal were annexed to both the Parchments, the one written, and the other Blank: He cut off the glewed skirts round about, and

Hill. 4. Jac.
Leak's
Case. Co.
Lib. 12.
f. 15, 16.

took off the uppermost thin Parchment (which was written, and was a true and perfect Patent,) from the Label; which with the Great Seal did still hang to the Parchment, and did publish it as a good Patent. Hereupon a Question was moved, Whether this Offence be High Treason, or no? Upon Conference had with the Judges, It was Resolved by them, That this Offence was neither High Treason, nor Petit Treason, because it is not within any of the Branches of 25 E. 3. But it is a very great Misprision.

I shall conclude this Learning touching Misprisions of Treasons, with these Particulars worthy of the Reader's notice.

1. That in all Cases of Misprision of Treason, the Party Offender shall forfeit all his Goods, Debts and Duties for ever; And the Profits of his Lands for Term of his Life, and to be imprisoned during Life.

2. That

2. That if any person will save himself, that knoweth of any High Treason, from the aforesaid punishment; he ought with as much speed as conveniently he can, to reveal the same to the King, or to some of his Privy Council, or to any other Magistrate.

Coke.

3. That in Case of High Treason, whether the Treason be by the Common Law, or Statute Law, the Concealment of it, is a Misprision of Treason.

Coke.

4. That in every Treason, is included a Misprision; and where any hath committed Treason, the King may cause the same to be Indicted, and Arraigned, but of Misprision only, if the King will.

Hitherto touching Misprision of Treasons; I come now in the last place to propound some Quarries (with their Solutions) relating to Tryals, Indictments, Pardons, &c.

5. *Of several Queries with their solutions touching Treasons in general.*

Question 1. *How shall a Treason, that is committed out of the Realm, be tryed at this day?*

It is answered, That according to some of our (a) Books, the offender shall be Indicted, and tried in this Realm, where his Land lyeth, and so it was adjudged in 2 H. 4. But now by the Statute of 35 H. 8. c. 2. (which yet remains in Force,) all offences made or declared, or hereafter to be made or declared Treasons, Misprision of Treason, and concealment of Treason, committed out of the Realm of England, shall be inquired of, heard and determined either in the King's Bench, or before Commissioners in such Shire, as shall be assigned

Co. 3. Inst.
E. 11. (a)
4. Ass. pl.
15. 19 E.
4. 6. b. Dyer
er 3 Mar.
132. 13
Eliz. Dyer.
298. Stamford
PL. cor.
1. 90. a.

signed by the King. If it be before the Commissioners, it hath been commonly used, that the King doth write his name in the upper part of the Commission. But in the Case of *Patrick o Cullen*, an *Irishman*, the Queen did put the Signature to the Warrant, to the Lord-Keeper, and not to the Commission, and it was holden by the Justices, That the one way and the other, was a sufficient Assignment by the King, within the Statute of 35 H. 8. Hill. 36.
Eliz.

Again, Sir *Edward Coke* tells us thus; The Statute of 25 E. 3. *de proditionibus* doth declare, That it is Treason by the Common Law, to adhere to the Enemies of the King within, or without the Realm, if he be thereof provably attaint of Overt-fact, and that he shall forfeit all his Lands, &c. A man (sayes he) must not Imagine, that seeing by the Common Law, declared by Authority of Parliament, That adhering to the King's Enemies without Co. Litt. f.
261. b.

out the Realm, is High Treason, and that the delinquent may be attainted thereof, &c. That this should want Tryal: for then the Judgment of the Common Law, and Declaration of the Parliament would be Illusory, which no well advised Man will think, in a matter of so great Consequence. But certain it is for necessities sake, the Adherency, without the Realm, may be alledged in some place, within *England*; And if upon Evidence they shall find Adherency, out of the Realm, they shall find the Delinquent Guilty. But most commonly they Indicted him (if he had any Lands) in some County where his Lands did lye, that were to be forfeited, and; this as appeareth in our Books, was the Common Use. And so it is declared by the 35 *H.* 8. And that it shall be tried by 12 Men of the County, where the King's Bench shall sit, and be determined, before the Justices of that Bench, or else before such Commissioners, and in such
Shire.

Shire of the Realm, as shall be assigned by his Majestie's Commission, and this Statute for this point remains in force at this day, and so it was resolved by all the Judges in 33 Eliz. in the Case of *Orurk*.

Question 2. *Whether a Treason done in Ireland, may be tryed in England.*

It is answered, That for a Treason done in *Ireland* the offender may be tryed by the Statute of 35 H. 8. in *England*, because the words of the Statute be, All Treasons committed out of the Realm of *England*, and *Ireland* is out of the Realm of *England*. And so it was resolved in *Sir John Parrot's Case*.

Co. 3. Inst.
fo. 11.
Co. Litt.
f. 261. b.

Questions

Question 3. *How Treasons committed on the Sea, shall be tryed, and determined?*

It is answered, That by the 28
 28 H. 8. c. 15. H. 8. (which Act is not taken a-
 way by the Statute of 35 H. 8. c. 2.) All Treasons done upon the Sea shall be inquired, heard, and determined in such *Shires*, and places of the Realm, as shall be limited by the Kings Commission, in like Form, and Condition, as if the same had been done upon the Land, &c. After the Common Course of the Laws of this Realm. And by the Preamble of the said Statute it appeareth, That it could not be tryed by the Common Law, but by the Civil Law, before the Admiral.

Question

Question 4. *Whether, a Tray-
tor dying before his Attain-
der, his properties be lyable to
a Forfeiture?*

I answer, That if a man doth
adhere to the Enemies of the King,
and be Slain in open War against **Coke.**
the King, or otherways dye before
the Attainder, he forfeiteth no-
thing; because (as the Statute of 25
E. 3. saith) he is not attainted.
And this is apparanted by a Judg-
ment in Parliament, *Anno 29 H. 6. c.*
1. That *Jack Cade* being Slain in open
Rebellion, could no way be punish-
ed, or forfeit any thing; and there-
fore was Attainted by the said Act
of High Treason.

Question

Question 5. *Whether there be any diversity in Law, where a man stands mute upon an Indictment of Treason, and where upon an Indictment in Felony?*

Co. Litt.
f. 391. a.
Co. 3. Inst.
f. 14.

It is answered, That there is a difference; For if the party upon his Arraignment in Felony refuse to answer, according to Law, or say nothing, he shall not be adjudged to be hanged, but for his Contumacy, to *pain fort and dure*, which works no Attainder for Felony, nor Forfeiture of his Lands, or corruption of Blood. But in the Case of Treason, If the party refuse to answer according to Law, or say nothing, he shall have Judgment by Attainder, as if he had been convicted by Verdict, or Confession.

Question

Question 6. *Whether Persons guilty of Rebellion in the Northern or Western Parts, and Confessing their Offences before 3 of the Council, may be Indicted, and tried at London?*

It is answered, That the Rebels in the North, according to the opinion of the Justices of both Benches, which had acknowledged their Offences before three of the Privy Council, shall not be indicted, and tried here at London, out of the Countrey according to the Statute of 33 H. 8. for that Act is repealed for Treason by 1. & 2. Ph. and Ma. Notwithstanding the opinion of *Stanford*, in his Book; but they may be indicted in the Countrey, where the Offence was committed, and the Indictment removed into the King's Bench, or before Justices of Oyer and Terminer in *Middlesex*, and if they plead not Guilty, the
Tryal

*Dyer f. 286.
b. vide.*

Tryal be by Men of the Countrey, where they were Indicted, or by the Free-holders that remain here out of the Countrey, as it was done in the Case of *S.* in the time of Queen *Mary*. Thus much *Dyer*.

Co. 3. Inst.
f. 27.

Sir *Edward Coke* informeth us likewise, That a Tryal in a Foreign County upon Examination, before Three of the Council, &c. by the Statute of 33 *H. 8. c. 23.* is abrogated by the Act of 1. & 2. *Ph.* and *Mar.* being a Tryal contrary to the due Course of the Common Law, which is to have it tried by Jurors of the proper County, but the Indictment being found in the proper County, it may be by special Commission, heard, and determined before Commissioners in any Foreign County, but the Tryal must be by a Jury of the proper County, and this is warranted by the Course of the Common Law. And albeit when the Term begins, all Commissions of *Oyer* and *Terminer* in the County, where the King's

Kings Bench sit, be suspended during the Term, yet if an Indictment be found before such Commissioners before the Term, there may be a special Commission made, Commissioners in the same County, sitting the Kings Bench in that County, to hear and determine the same during the Term: For the King's Bench hath no power to proceed thereupon, till the Indictment be before them.

Question

Question 7. *Whether a Woman Guilty of High Treason, and Quick with Child, can upon her Arraignment Plead it?*

Co. 3. Inst.
17. 18.
Lambardus
f. 166. de
foemina
gravidâ,
que capita-
lis suppli-
cio damna-
tur. Notes
on Hen-
garb f.
131, 133.

It is answered ; When a Woman commits Treason, and is Quick with Child, she cannot upon her Arraignment Plead it, but she must either Plead not Guilty, or Confess it : And if upon her Plea, she be found Guilty ; or Confess it, she cannot alledge it in Arrest of Judgment, but Judgment shall be given against her. And if it be found, by an Inquest of Matrons, that she is Quick with Child (for *Privment Encient* will not serve,) it shall Arrest and respite Execution, till she be delivered; but she shall have the Benefit of that but once, though she be again Quick with Child : So as this Respite of Execution for this Cause is not to be Granted only

Safety of the Crown.

95
94

ly in Case of Felony, whereof Justice Stanford speaketh, but in Case of High Treason, and Petit Treason also.

In the Point of Respiting Execution the Civil-Law concur's with ours.

Pregnantis mulieris consumenda damnatae poena differtur, quoad pariat. Ego quidem, etne questio de ea habeatur, scio observari, quamdiu pregnans est. D.48.19. 3. De pregnante.

Pregnans antequam pariat, neque Gothofredus. Grot. Lib. 2. c. 2, nu : 14. de jure belli ac pacis.

Question.

*Question 8. Whether a Person
Arraigned for Treason shall
have Counsel Assigned?*

Co. 3. Inst.
29. 137.
Co. Lib. 6.
Arundel's
Case.
Doctor &
Stud. Lib.
2. c. 48.

It is answered, That the Prisoner at Bar, when he Pleadeth Not Guilty, whereby he denieth the Fact, needs no Advice of Counsel to that Plea; But if he hath any matter of Law to Plead, he shall have Counsel Assigned to him to Plead the same, or any other Matter in Law, as to Plead the General Pardon, or a particular Pardon, or the Like. And after the Plea of Not Guilty, the Prisoner can have no Counsel Learned Assigned to him, to Answer the King's Counsel Learned, nor to defend; Otherwise it is in an Appeal, which is the Suit of the Party.

Co. 3. Inst.
29.

Note, That in the Kingdom of Scotland in all Criminal Cases, yea in Case of High Treason, *Par*
Rea,

Rea, the Party accused, may have Counsel Learned Assigned to him.

Question 9. *What Number the Party Arraigned for Treason, can Challenge, of Juries, upon his Tryal?*

I Answer; A Challenge to Juries, is Two-fold, either to the *Array*, or to the *Polls*; And Challenge to the *Polls* is a Challenge to particular Persons; and these be of four Kinds, That is to say, Peremptory, Principal, which induce to Favour, and for default of Hundredors.

Coke. 3.
Inst. f. 27.
Co. Lib. f.
156. b.

Peremptory, this is so called, because he may Challenge Peremptorily, upon his own Dislike, without shewing of any Cause. And this only in Case of Felony or Treason only, *in favorem vite*, and by the Common-Law the Prisoner

soner upon an Indictment, or Appeal, might Challenge Thirty-five, which was under the Number of 3. Juries; but now by the Statute of 22. *H. 8.* The Number is reduced to Twenty in Petit-Treason, Murder, and Felony, and in Case of High-Treason, and Imprison of High-Treason, it was taken away by the Statute of 33. *H. 8.* But now by the Statute of 1, and 2. *Pb. and Mar.* the Common-Law is revived for any Treason, the Prisoner shall have his Challenge, to the Number of 35. And so it hath been resolved by the Justices, upon Conference between them in the Case of *Sr. Walter Raleigh* and one *George Brooks*. But all this is to be understood, when any Subject that is not a Peer of the Realm is Arraigned for Treason or Felony. But if he be a Lord of Parliament, and a Peer of the Realm, and is to be tryed by his Peers, he shall not Challenge any of his Peers at all; for they are not sworn as other Juries be;

be; but find the party Guilty, or not Guilty; upon their Faith, or Allegiance to the King, and they are Judges of the Fact, and every of them doth separately give his Judgment, beginning at the lowest. But a Subject under the Degree of Nobility may in Case of Treason or Felony Challenge for just Cause as many as he can.

Co. 3. Inst.
f. 27. Co.
Litt. 156.
b.

Henry Garnet Superior of the Jesuits in England, upon his Arraignment for the Powder Treason, did challenge *Barrel* a Citizen of London peremptorily, and it was allowed unto him by the Resolution of all the Judges. So as in the Case of *High Treason*, or Misprision of Treason, a Man may Challenge 35. peremptorily, which is under 3. Juries, but more he cannot.

Jac. Regts
in Garnet's
Case.

Quest. 10. *Whether a Man
may plead a Foreign Plea,
upon an Indictment of H.
Treason?*

Coke 3.
Inst. f. 27.

It is answered that if a Man be indicted for High-Treason, he may at this day plead a Foreign Plea, as he might do by the Common Law, and shall be tried, in the Foreign County; But otherwise it is in Cases of Petit-Treason, Murder, or Felony; for there it shall be tried, in the County, where the Indictment is taken.

Quest.

Quest. 11. *Whether a Nobleman, and Lord of Parliament of this Realm, shall be tried in all Cases, by his Peers?*

It is answered that a Nobleman shall be tried by his Peers, but only at the suite of the King, upon an Indictment of High-Treason, or misprision of the same, Petit Treason Murder, or other Felony, or misprision of the same; But in Case of a *Premunire* or the like, though it be at the suite of the King, he shall not be tryed by his Peers, but by Freeholders. And so in an appeal at the suite of the Party, for Petit-Treason, Murder, Robbery, or other Felony, he shall be tryed by Freeholders.

Co. 3. Inst. f. 30. *Bulstrode's Reports* 1. part, Lord *Vaux* his Case.

Co. 2. Inst. f. 48, 49. Co. Lib. 9. f. 30. b.

F 3

Quest.

Quest. 12. *Whether an Earl by Nativity shall be tryed by Lords and Peers of the Parliament.*

33 H. 8.
Br. Tit.
Treason nu.
2.

It is answered; That in the Case of *H. Howard*, Earl of *Surrey*, Son and Heir Apparent of *Thomas* Duke of *Norfolk*, who was attainted of High-Treason, for joyning the Arms of England, before the Conquest, and other Armes to his own, &c. The Tryal was by Knights and Gentlemen, and not *per Dominos*, nor *per Pares Regni*, because he was not an Earl by Creation, but by Nativity, as Heir apparent to the Duke, which is no dignity in Law; for had it been a dignity by Creation, and he a Lord of Parliament, he should have been tried by his Peers.

Coke.

Note. Albeit a man be Noble, and yet no Lord of Parliament of this Kingdom (as if he be a Nobleman

bleman of Scotland, of Ireland, of France, or of Spain, &c.) he shall be tryed by Knights, Esquires, or others of the Commons. And so it is of the Son of a Duke, Marquess, Earl, &c. He is Noble, and called Lord; And yet because he is no Lord of Parliament, he shall be tryed as one under the Degree of a Peer, and Lord of Parliament.

Question 13. *Whether a Peer of the Realm, that is indicted of Treason, &c. can be there- of Arraigned, in the upper House of Parliament?*

It is answered, That a Peer of the Realm, being indicted of Treason, or Felony, or of Misprision, and duly transmitted to the Lords, may be Arraigned thereof, in the Upper House of Parliament, as frequently in Parliament Rolls it doth appear; but then there must be appointed a Steward of England, who

F 4

shall

Co. 3. Inst.
f. 31. 10 E.
4. 6. Rot.
Par. 21 R.
2. Countee
de A-
rundel's
Case.
Rot. Parl.
5 H. 4. nu.
11, 12. 31
H. 6. nu.
49. Countee
de Devon's
Case.

The Latw for the

shall put him to Answer; And if he plead *not Guilty*, he shall be tryed *per pares suos*, and then the Lords Spiritual must withdraw, and make their Proxies; but no Appeal of Treason can be in Parliament, but is ousted by the Stat. of 1 H. 4. c. 14.

Question 14. *Whether the Commission of a Lord Steward may be adjourned?*

Coke 3.
last. f. 31.

I answer, That though the Commission of the Lord Steward be only in these latter days *hac vice*, yet may the same be adjourned, as other Commissions *hac vice*, may. And so it was holden in the Lord Dacre's Case. And so it was done by the Steward of England in the Case of R. Earl of S. and of F. his Wife, who adjourned his Commission, till the next day.

Quest.

Question 15. *What is to be done, in Case a Nobleman be Indicted of Treason, &c. and appears not, and cannot be taken?*

Answer, That he shall be outlawed, *per judicium Coronatorum*; Co. 3. Inst. f. 31.
 But you will be ready to say; How doth that stand with *Magna Charta*; c. 29. *nec super eum ibimus, nec super eum mittemus, nisi per legem Judicium Parium suorum*? I reply, That this Law is to be intended, when he appears, and pleads *Not Guilty*, and puts himself upon his Peers: But when he absents himself, and will not yield himself to the due Tryal of his Peers, then he shall be out-lawed *per Judicium Coronatorum*, or else he should take Advantage of his own Contumacy, and flying from Judgment.

**Question 16. Whether by the
Pardon of all Felonies, Treason
be pardoned?**

Co. Litt. f.
391. a. Co.
3. Inst. f.
15. 236.

It is answered, That in antient times this word [*Felony*] was of so large extent, as it included High-Treason. And therefore in our antient Books, by the Pardon of all Felonies, High-Treason, or Counterfeiting the Great Seal, and of the Kings Coin, &c. was pardoned: But afterwards it was resolved, that in the King's Pardon, or Charter, this word [*Felony*] should only extend to Common Felonies, and that High-Treason should not be comprehended under the same, and therefore to be specially named.

Quest.

Question 17. *Whether a man attainted of Felony can be forced to answer to a Treason committed before the attainder of that Felony?*

I answer, That he shall be forced to answer to the Treason, and the Reason is, because the King by the Treason was intitled to have the forfeiture of his Lands, of whomsoever they were holden: And besides for Treason there is another Judgment, being an offence of a Higher nature: But being attainted of Felony, if the party commit Treason afterward, he shall answer thereunto, because it is of a Higher nature then the Felony, but it shall not devest the Right of the Escheate, which was lawfully vested in the Lords. But if a man be Attainted of Treason, he cannot be after attainted of a former Treason.

Co. 3. Inst. 213. 1 H. 6. Rot. Parl. 3 R. 2. nn. 18. Jo. Em. perialls Case. Co. 3. Inst. f. 213.

Quest.

Question 18. *Whether a Person, attainted of Treason, &c. shall be lyable to Arrests, or any other Actions?*

Co. 3, Inst.
fi 215.
Cro. 1.
part Trus.
ss. Case.

It is answered, That although Judgment be given against a Man in Case of Treason, yet his body is not forfeited to the King, but, until Execution, remains his own. And therefore before Execution, if he be Slain without Authority of Law his Wife shall have an Appeal; for notwithstanding the Attainder, he remained her Husband. And after such Attainder, his body may at the Suite of a Subject be taken in Execution upon a Judgment or Stat. &c. And he may be Executed for the Treason; notwithstanding such Execution had against him. And in an Action of Debt, or other Action brought against a Person Attainted, he cannot plead the Attainder, and demand Judgment, If during the Attainder, he shall be put.

put to answer, as appears by our
Books 11. *Aff. pl.* 27. 2 *E.* 4. 1. 4
E. 4. 8. 6 *E.* 4. 4. 4. 6 *H.* 4. 6. 8
Eliz. *Dyer* 245.

Question 19. *Whether an
Action lieth, for the procu-
ring one, to be indicted of
Treason?*

Sir Edward Coke held in the Case
between *Lovet*, and *Fawcner*, Mich. Cro. 2.
12 Jac. That no Conspiracy, nor part *Lovet*
Action upon the Case in nature of v. *Fawc-*
a Conspiracy, lyeth for the procu- ner f. 358.
ring one to be Indicted of Treason; vide *Bul-*
For every Man is bound to discover strod 2.
Treason, and ought not to conceal part, fol.
it, for the least time, because it is 271.
against the State of the Common-
wealth, which every one is in duty
to maintain; And Treason is se-
cret, and lieth in the Heart of Man.
And every one is bound to disclose
such Matters, as tend thereunto:
And it being dangerous for any
Man,

Man, to conceal any thing, which may tend to Treason; therefore the procuring one to be indicted concerning it, is no Cause of Conspiracy: For although Actions upon the Case have been maintained, for procuring one to be indicted of Felony, yet such an Action was never brought for procuring one, to be indicted of Treason.

*Rolls his
Reports 2.
part f. 236,
237.*

It was adjudged, That Conspiracy lyes not, in the Case of Treason, but it does lye in Case of Felony for indicting another of it.

But the Law is otherwise now, for it has been since adjudged, That an Action upon the Case in nature of a Conspiracy lies, as well in case of Treason as Felony, for the procuring one to be indicted of Treason. vide *Cro. 3. part Smith v. Crashaw* f. 15, 16. *Jones Reports* f. 93, 94, 95.

Quest.

Question 20. *Whether Justices of Goal-Delivery can hear, and determine of Treasons?*

It is answered, An Indictment was before Justices of Peace, and Goal-Delivery, and the Indictment was of Treason. And it was resolved to be void; for Justices of Goal-Delivery by their Commissions cannot hear and determine Treasons.

Stamford f.
185. a.
Roll's Re-
ports 2. pa.
Bryn's Case.

Question 21. *Whether a Pardon for High-Treason, by implication be sufficient?*

It is answered, That it is not. And therefore there is a difference betwixt a Pardon of Treason and Felony, as appeared in Sir Walter Raleigh's Case, who was brought to the King's Bench Bar, by the Lieutenant.

Roll's Re-
ports, Sir
Walter Ra-
leigh's case.
Cro. 2. pa.
Sir Walter
Raleigh's
Case.

Lieutenant of the Tower, to know what he could say, why Execution should not be done on him upon his Attainder of High-Treason at *Winton*. 10 *Jac.* Sir *Walter* answered, That in 22 E. 3. *Fitzb. Corone.* One. attainted of Felony went with the King to his Wars in *Gascoign*, and there he had a Command, under the King. And after being impeacht, and questioned by the King for the said Felony, he pleaded this same matter, and upon it he was discharged: And our King by Commission had constituted me the General of His Navy for *Guiana*, and in his Commission had styled me; his true, and Loyal Subject; And I demand your opinion, If this be not a Pardon in Law? To which the Judges answered, That it was not; For Felony perchance a Pardon by Implication may be sufficient, as in the Case of 22 E. 3. But for Treason, a Pardon by Implication will not suffice. But there ought to be express

press words of the Pardon; and so he was Executed.

I shall now conclude my whole discourse with this Querie, viz.

Whether the Seal, of Confession can in part free some Subjects, from special duties of obedience unto their Sovereign, as Priests from Revealing Treasons, and Conspiracies, which they know, as Ghostly Fathers, from the Penitent?

I answer, That if Priests in Confessions do understand of Treasons, and other enormous Offences, endangering the Publick Safety of the Church, or Commonwealth, as God and as Christ Vicars; then they are to imitate him, whom they would represent, in the discovering of such grievous
and

and abominable Crimes. For God Almighty (as says one) always doth after a miraculous manner, and (as it were) by his own immediate Finger bring to Light Crying Sins, when they are done in Secret, and for a time are inwrapped in Obscurity, and Darkness. That Priests are not exempted from discovering or revealing Treasons, which they know as Ghostly Fathers, from the Penitent, I shall produce an Example out of the French History, where we may read that some Priests of France have detected Intendments of Treason only in thought, heard by them in Confession: And the Authors of these Intendments have been Punished with Death.

Rodinus
Lib. 2. de
Repub. c. 5.

A Gentleman of Normandy Confessed unto a Fryer Minor, that he had once a Resolution to Murther King Francis, and that he repented of his Wicked Purpose. The Fryer gave him Absolution

solution, but revealed his Wicked Purpose unto the King : And after deliberation had thereof in the Parliament of *Paris*, the Gentleman was executed ; And the Fryer not Punished with any Censure of the Church for his Detection.

By our Countrey-Laws, A man Indict'd of High Treason, cannot have the Benefit of Clergy, nor any Clergyman Privilege of Confession to conceal High Treason, and so it was resolved in 7. H. 4. Whereupon Fryer John Randolph, the *Queen Damager's* Confessor, accused her of High-Treason for Compassing the Death of the King : And so it was Determined, and Adjudged in the Case of *Henry Garnet*, Superior of the Jesuits in *England*, who would have shadowed his Treason, under the Privilege of Confession, although indeed he was not only consenting, but abetting the Principal Conspirators of the *Powder-Treason*.

Rot. Parl.
Anno. 7. H.
5. nu. 13.

Hil. 3. Jac.
Garnets
Case. Co.
2. Inst. f.
629. on
Art. Cler. c.
10.

The Lawes for the
son as by the Record in his Attain-
 der appeareth.

I am not Ignorant what the Po-
 pish Priests have to say in answer
 to what I have here produced ;
 They will say, the Law of the
 Church commandeth Priests to
 Conceal all such Sins as come unto
 their Knowledge, by way of Con-
 fession.

To this I Reply, That this Law
 of the Church is but the Law of
 Pope *Innocent* the third cited in
 the Decretalls (for he is the most
 Antient Author, that the Jesuits
 can alledge for their Seal of Con-
 fession :) But were it a Law of
 the whole Church, it is but an Ec-
 clestiastical Law. Now if Duties
 enjoined by God himself in his
 Moral Law, as not to do any man-
 ner of Work upon the Sabbath
 Day, may be omitted by our Sa-
 viours Commandment to save the
 Life of a Beast : May not some-
 thing, say I, imposed only by an Ec-
 clestiastical

Safety of the Crown.

1170

ecclesiastical Law, be neglected for
saving the Life of a King, upon
whom many Lives depend?

*Ille est vinculum per quod Respub- Seneca Lib.
lica coheret, ille Spiritus vitalis, i. d. cle-
quem hae tot millia trahunt, nihil ip- mentia.
sa per se futura, nisi onus et praeda,
si mens illa Imperii subtrahatur. Re-
ge incolumi mens omnibus una, o-
missa rumpere fidem.*

Notes

Notes upon the Judgment in High Treason.

THat we may the better Comprehend the Law of England, touching the Judgment usually given against one, attainted of High-Treason, I shall offer to the view of my Reader these Particularities following, worthy of his Observation.

1. *The supposed Beginning, or first Institution of it.*

2. *The form of this same Judgment.*

3. *What is implied in it.*

4. *How the proceeding of the Law (contained in this Judgment) against the Wives and Children of Traitors*

can consist with Prudence, and Reason.

5. *The Fatal End, and Improperity of Trayters in General.*

First, The Institution of the Judgment in High Treason.

It is related in our History, That *David*, Prince of *Wales* (being within the Homage, and Ligeance of the Crown of *England*;) for Levying of War against King *Edward*: (that was Stiled *Vindex Libertatis Anglicanae*, the *Moses*, that delivered his People from Popish Slavery, and Oppression,) was taken in *Wales*, and Judged here to an Ignominious Death. First, Drawn at a Horse-Tayl, about the City of *Shrewsbury*, then Beheaded, the Trunk of his Body Divided, His Heart and Bowels Burnt, His Head sent to Accompany that of his Brothers, on the

the Tower of London ; His four Quarters to four Cities, Bristol, Northampton, York, and Winebester ; a manifold Execution (sayes the Historian,) and the Firſt ſhewed in that Kind to that Kingdom, in the Perſon of the Son of a Prince, or any Nobleman, that we read of, in our Hiſtory ; But this Example made of one, of another, grew after to be uſual to this Nation. *Daniel.*

Secondly, The Judgment it ſelf in High Treason.

Coke.

The uſual Form of the Judgment given in High-Treason, is thus delivered by Sr. Edward Coke.

Et ſuper hoc viſis, & per Curiam hic intelleſtis omnibus, et ſingulis premiſſis conſideratum eſt, quod predictus R. uſq; furcas de T. trabatur et ibidem ſuspendatur per Collum, et vivus

vivus ad terram prosternatur, et interiora sua extra ventrem suum capiuntur, ipsoque vivente comburantur, et Caput suum amputetur, quodque Corpus suum in quatuor partes dividatur, ac quod caput, et Quarteria illa ponantur, ubi Dominus Rex ea assignare vult.

The Form of the Sentence Pronounced against *Coleman*, by my Lord Chief Justice *Scroggs*, Was thus;

“ You shall return to Prison,
“ from thence be drawn to the
“ Place of Execution, where you
“ shall be Hanged by the Neck, and
“ be cut down alive, your Bow-
“ els burnt before your Face, and
“ your Quarters Severed, and your
“ Body Disposed of, as the King
“ thinks fit.

The Judgment pronounced, according to the usual form, in the year 1572. against a Peer of the Realm, was in these words: For

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as

as much as thou ——— hast been charged with High Treason, and hast denied thy self to be guilty, and hast submitted thy self, to the Tryal of thy Peers, who have found thee guilty: This Bench judgeth thee to be Led back from hence to the *Tower*, then to be laid upon an Hurdle, and drawn through the middest of the City to the Gallows, there to be hanged, and being half dead, to be taken down, Bowelled, and after thy Head is cut off, to be Quartered into four Parts; Thy Head and Body to be done according to the Queen's Pleasure, and God have mercy on thy Soul.

But it may be here queried by some, whether the King can alter Execution otherwise then the Judgment of the Law doth direct, in Cases of Treason, and Felony?

It is answered, That in Case of Treason and Felony, there is an expresse Judgment, and an impley-
ed

ed Judgment: Express, when upon appearance, &c. an express Judgment is given against him, *quod suspendatur per Collum*: Implied, when the offender makes default, and is outlawed, where the Judgment is, *Ideo utlagetur*; and yet the like Execution shall be in Case of Outlawry, as in Case of an Express Judgment. And so it was adjudged in case of a Person outlawed for Felony, he ought to be hanged untill he be dead, and cannot be beheaded. But in Case of High-Treason, because beheading is Parcell of the Judgment, the King may Pardon all the Residue of the execution except that: For seeing the King may Pardon the whole Execution, he may pardon any part, or all, saving part. *Co. 3. Inst. 1. 52.*

Again sayes Coke; *Non licet felonem per feloniam decollare*; and yet some Examples are to the contrary.

The Lord *Hungerford* of *Heytsbury* was in 32 H. 8. Attainted of Buggery, and had Judgment to be Hanged by the Neck, until he was dead, and yet he was beheaded at *Tower-Hill*.

Edward Duke of Somerset was attainted of Felony in anno 5 E. 6. and had Judgment to be hanged by the Neck, untill he was dead, and yet he was beheaded at *Tower-Hill*. On the other side we have precedents of Noblemen, in Confirmation of the Rule aforesaid, that have been hanged in Cases of Felony.

Thomas Fines, Lord *Dacres* of the South in anno 33 H. 8. was attainted of Murder, and had Judgment to be hanged by the Neck, until he was dead, and according to the Judgment was hanged at *Tyburn*.

The Lord *Stourton* 3 and 4 *Ph.* and *Mar.* was attainted of Murder, and had Judgment to be hanged by the neck, until he were dead, and according to the Judgment was hanged.

In Case of High-Treason, Beheading is part of the Judgment, and therefore the King may pardon all the Rest, saving beheading, as is usually done in Case of Nobility. But if a man being attainted of Felony, be beheaded, It is no Execution of the Judgment, because the Judgment is, That he be hanged, untill he be dead. In this case the Judgment doth belong to the Judge, and he cannot alter it, the execution belongs to the Sheriff, &c. and he cannot alter it. And if Execution might be altered in this Case from Hanging to Beheading, by the same Reason, It might be altered to Burning, Stoning to death, &c. *Ca. 3. Inst. f. 211, & 212.*

*Thirdly, What is implied in
this Judgment.*

In this same Judgment against a Traytor are implied these several Judgments.

1. The Forfeiture of all his Mannors, Lands, Tenements, and Hereditaments in Fee simple; of whomsoever they be holden; And so it is ordained by the Statute of 25 E. 3. c. 2. *de proditionibus*; The words whereof, are that of such Treason, the Forfeiture of *Escheater* pertaineth to the Lord our King, as well of the Lands, and Tenements holden of others, as of himself. This indeed is but an Affirmance of the Common-Law. And the Reason thereof is, for that the offence is committed against the Sovereign Lord, the King, who is the Light, and Life of the Common-wealth. And therefore the Law doth give to the King in satisfaction of his offence

offence, all the Lands, &c. which the Traytor hath, and that no Subject should be partaker of any part of the Forfeiture for this High-Treason.

This Forfeiture by Attainder of High-Treason doth likewise extend to Rent-Charges, Rents seck, Common, Corodies, and other Hereditaments, which are not holden; for in Case of High-Treason, the Tenure is not at all material.

By later Statutes, upon Attainder of High-Treason, forfeiture is given to the Imperial Crown of England.

1. *Of Estates Tayle.* 26 H. 8. c.

13. 33 H. 8. c. 20. 5 & 6 E.

6. c. 11.

2. *Of Uses,* 33 H. 8. c. 20. 5

E. 6. c. 11.

3. *Of Conditions,* 33 H. 8. c. 20.

unless they be knit to the Person.

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Co.

The Laws for the

Co. Lib. 7. Englefield's Case.
Anderson's Reports, Englefield's
Case.

4. Of Rights of Entry, where any was in the Lands by Title before Treason committed. Co. Lib. 7. Englefield's Case.

But at this day, such things as these, are not Subject to Forfeiture for High-Treason.

1. Lands, or Tenements, or Rights in auter droit, as in the Right of the Church, or in the Right of the Wife, but only during Coverture.
2. A foundership of an House of Religion in free Almoign, for that is annexed to the blood of the Founder.
3. Rights of Actions, where the Entry is taken away.
4. Trusts of a Free-hold, Cro. 2. part

part f. 513. Dacomb's
Case.

2. The Forfeiture of his Goods and Chattels, Now Goods, in French *Biens*, in Latine *Bona*, includes all Chattels, both Real, and Personal.

Personal, as Money, Horses, and other Beasts, Household-Stuff, Debts, Recognizances, Bonds, Bills, Judgments, &c.

Real, as Terms for years of Lands or Tenements, Wardships, the Interest of Tenant by Statute-Staple, by Statute-Merchant, by *Elegit*, and such like.

As to the Relation of these forfeits, *viz.* Of Lands, and Goods, take this diversity.

Men attainted of Treason by Verdict, or Confession, do forfeit all the Lands they had, at the time, of their offence committed, and the

G 5 King,

King shall come in, and avoid all Leases, Statutes, or Conveyances done by the Traytor, at any time since the offence of Treason perpetrated. And so is the Law clear also, if a Man be attainted of High-Treason, by Outlawry. But for Goods, Chattels, and Debts, the King's Title shall look no further back then to those goods, the party attainted by Verdict, and Confession, had at the time of the Verdict, and Confession; given or made. And in outlawries at the time of the Exigent, as well in Treasons, as Felonies; wherein it is to be observed, that upon the parties first apprehension, the Kings Officers are to seize all the Goods, and Chattels, and preserve them together, disposing only so much out of them, as is fit for the sustentation of the Person in Prison, without any wasting; and disposing them, until Conviction, and then the property of them, is in the Crown, and not before.

It may be queried here, whether Begging of Lands, and Goods before Conviction, &c. be lawful?

It is answered, That the begging of the Goods, or State of any Delinquent accused or Indicted of any Treason, Felony or other offence, before he be convicted, and attainted, is utterly unlawful, because before Conviction, and Attainder, nothing is forfeited to the King, nor grantable by him. And besides it either maketh the prosecution against the Delinquent more precipitate, violent, and undue, then the quiet, and equal proceeding of Law, and Justice would permit, or else by some under hand Composition, and agreement stop, or hinder the due Course of Justice for Exemplary punishment of the offender. Co. 3. Inst. f. 229.

Non

Non ut quis in Carcerem deductus est (sayes the Civil Law) spoliari eum oportet; sed post condemnationem. Idque Divus Hadrianus rescripsit.

3. His Wife to lose her Dower. At this Day by the Statutes of 1. E. 6. c. 2. & 5. E. 6. c. 11. A Wife shall not lose any Title of Dower, which to her was accrued, by the Attainder of the Husband, by any manner of Murder, or other Felony, whatsoever. But if the Husband be attainted of High-Treason, she shall be barred of her Dower, at this Day, so long as the Attainder Stands in Force. And yet not of all Kind of Treasons; For Treasons by the Statute of 5. Eliz. c. 1. (for assurance of her Majestie's Royal Power) or by the Act of 5 Eliz. c. 11. (against Clipping, Washing, Rounding, or Filing of Coyns,) or by the Statute of 18. Eliz. c. 1. (Against Diminishing or Impairing the Queen's

Queen's Coin, or other Coin Current here, do none of them, make any Corruption of blood, or Forfeiture of Dower.

Note, If after attainder the Baron purchase his Pardon, this is so far forth a new Birth unto him, that his Wife shall have Dower of the Lands, which come to him, after Pardon, if his Issue by her may by possibility inherit. *Parkins.*

And remember this Case, 3 et 4. *Phil. & Mar. Dyer* 140. b. Mary, the Wife of *Sr. John Gate*, attainted of Treason, brought a Writ of Dower, against one *Wife-man*, the Attainder of *Sr. John*, was Pleaded in Bar, she Replied, That long time before the said Attainder and before the Treason committed, after the Espousalls, the said *Sr. John Gate*, was Seised in Fee of the Land, whereof she demands Dower, and thereof infeoffed *A, B.* Whose Estate the Tenant

Tenant hath, upon a Demurrer, without Argument at Bar, or Bench, the Counsel of the Parties being heard in Mr. Justice *Brooke* Chamber, the Demandant was Barred of Dower, by the Opinion of all the Judges, because the Statute of 5, & 6. E. 6. c. 11. is, The Wife of a Man attainted of any manner of Treason whatsoever, shall in no wise be received to Ask, Challenge, Demand, or have Dower of any of her Husband's Lands, during the Force of that Attainder: And by *Stamford* 195. This extendeth to Petty-Treason. But Note (saith *Dyer*) the Lands sold and gone before Treason committed, were never Subject to Forfeiture or Escheate.

4. The Party attainted of High-Treason shall lose his Children for they become Base, and Ignoble.

We may read in History, of the Degradation of Persons attainted.

Sr. *Andrew Harkley*, Earl of *Carlile*, was Convicted, Degraded, and Attainted of High-Treason, in the Reign of *Ed. 2.*

I have been Informed by an Author upon the Degradation of a Person Attainted, That heretofore the Traytor had his

Spear Truncked,
Horse Docked,
Sword broken on his Helmet,
Crest Divided,
Coat-Armour Rased,
Shield Reversed,
Spurrs Hewed from his Heels.

And Last Punishment Implied in the Judgment of a Traytor is, That he shall lose his Posterity; for his Blood is stayned and corrupted, and they cannot inherit to him, or any other Ancestor.

This Corruption of Blood is so high, as it cannot absolutely be
 Salved,

Salved, and Restored, but by Act of Parliament; For albeit the Person Attainted, obtain his Charter of Pardon, yet that doth not make any to be Heir, whose Blood was corrupted at the time of the Attainder, either Downward, or Upward. As if a Man has Issue a Son, before his Attainder, and obtaineth his Pardon, and after the Pardon, hath Issue another Son, at the time of the Attainder, the Blood of the Eldest was corrupted; and therefore he cannot be Heir. But if he Die, leaving his Father, the Younger Son shall be Heir, for he was not in *Esse* at the time of the Attainder, and the Pardon restored the Blood, as to all Issues Begotten afterwards. But in this same Case, if the Eldest Son had Survived the Father, the Younger Son cannot be Heir, because he hath an Elder Brother, which by Possibility might have Inherited; but if the Elder Brother had been an Alien, the Younger Son should be Heir, for that

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the Alien never had any Inheritable Blood in him. *Co. Litt. f. 18. a.*

But yet there is a difference to be observed betwixt the Blood Lineal, and Collateral; For if a Man has Issue two Sons, and after is Attainted of Treason, and one of the Sons purchaseth Lands, and dieth without Issue, the other Brother shall be Heir; for the Attainder of the Father Corrupteth the Blood Lineal only, and not the Collateral Blood between the Brethren, which was Vested in them before the Attainder, and each of them by Possibility, might have been Heir to the Father, and so it hath been adjudged; In the Exchequer *Mich. 40. & 41. Eliz. in le case de Hobby.*

Note The Reason, Wherefore the King may by his Charter Pardon the Execution and Restore the Party, or his Heirs to the Lands Forfeited, by the Attainder, and remaining

remaining in the Crown, is, for that no Person hath thereby any Prejudice; But to make Restitution of Blood, the King cannot do it, but by Act of Parliament, because it should be to the Prejudice of others. *Coke.*

Fourthly; How the Proceeding of the Law, against the Wife, and Children of a Traytor, can consist with Reason, and Prudence.

Some think it very difficult to make out the Justice of this same Proceeding, That the Wife, and Children should be Afflicted for the Crime of the Husband and Parent, That the Descent of the Honour of a Traytor's House, should be Intercepted, the Estate Confiscated, and the Blood Tainted; and all this not for their own Sin but for the Offence of the Traytor.

I shall produce Authorities, out of several Authors, That this manner of Procedure is both Just and Prudent. And my first Author shall be a most Learned, and Rational Doctor, who in a Sermon lately Preached before his most Excellent Majesty, at *White-hal*, utters these Words following ;

“ The Proceeding of Law is
 “ Prudent ; Because many Men
 “ are so Desperate, that no Con-
 “ sideration of themselves, can
 “ restrain them from Mischief ;
 “ and yet such Men are afraid to
 “ ruin their Posterity, and by that
 “ fear are with-held from the
 “ greatest Mischief ; And this
 “ Proceeding is not only Prudent,
 “ but Just, because the Reason of
 “ the Publick Good, hath a Title
 “ in all Mens Honours, and E-
 “ states, Antecedent, and Supe-
 “ rior to their Private Right, and
 “ reserved, either Implicitly or Ex-
 “ pressly

"pressly in the Laws of all Na-
"tions.

This Reverend Doctor shall be
seconded by other Authors For-
reign, and Domestique.

To Deter, and Retain Men
from Committing of Treason, the
Law (saith Sr. *Edward Coke*)
hath Inflicted five Punishments,
upon him, that is Attainted of
Treason. 1. He shall lose his
Life, and that by an Infamous
Death, of Hanging between Hea-
ven, and Earth, as Unworthy;
in Respect of his Offence, of ei-
ther, 2. His Wife that is part of
himself, shall lose her Dower.
3. His Blood is Corrupted, and
his Children cannot be Heirs to
him: And if he be Noble or Gen-
tle before, he and all his Poster-
ty, are by this Attainder made Ig-
noble. 4. He shall Forfeit all his
Lands, and Tenements, And 5.
All his Goods, and Chattels. *Co.*
Litt. f. 41. d.

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The First *Solons* of the English Law (saies another Common Lawyer) be like, thought, That tender Regard of a Wive's Estate, should Restrain a Husband from all Enormous Transgression against the Sacred Crown, and Dignity Royal, would to God, it might; But the true Reasons why the Law was so Penal for such Offences of the Husband, toward the Wife (in whom perhaps was no Fault,) that thereby she should have no Dower: And towards the Children, that they should have no Descent of Inheritance (but the Hereditary Blood should be Corrupt) was upon these Reasons grounded; upon the Law of Nature, and given by *Stamford*, in his Book f, 194. Saith he, to this Effect; Men will now eschew those Capital Crimes, when they see those Persons; who in Nature and Affection, are Neerest, and Dearest unto them, and most to be Beloved, shall be Punished with themselves:

themselves : So that if themselves will not refrain such Crimes for themselves, yet they should the rather refrain for the Love of their Wife, and Children, upon whom they bring so perpetual Loss, and Punishment, and Stain of so Infamous a Note, as that their Stock, Blood, Lineage, shall be Corrupted, and Attain'd, their Children Disinherited, and the Wives of their Bosomes ; because the Wives of such Impious, and Foolish Husbands, by their Defaults are Deprived of all their Means, and Livelyhood.

With our Lawyers do concur the Civilians in this Point.

Regulariter Crimen vel pana paterna nullam filio maculam infligere potest: nam unusquisque ex suo admissio sorti subicitur, nec alieni Criminis successor constituitur. Ceterum id fit, partim ut parentes amore Liberiorum a Cade principum abstinant, Partim quod paterni, hoc est, Hereditarii

reditaria Criminis exempla in filiis
metuantur, ut ajunt Imperatores
Arcad. et Honor.

Hoc Praclarè Legibus comparatum
est (saies Cicero in 11. Epist to Bru-
tus,) ut charitas amicitiores Paren-
tes Reip. redderet. Itaque Lepidus
Cruentus in Liberos, non is, qui
Lepidum hostem judicat.

*Fifthly and Lastly, The Fatal
End, and Improsperity of
Traytors in general.*

It appeareth in our English Hi-
stories, That Traytors never pros-
pered, what good soever they pre-
tended, but were usually, most se-
verely, and exemplarily punished, as
shall be apparanted by these follow-
ing Examples.

Edrick, guilty of Disloyalty to
Edmond Ironside, was afterwards be-
headed, by the Command of Anne,
who

Anno.
1018.

who caused his Head, to be set on the highest part of the Tower of London, which punishment gave a general Satisfaction to the People, that rejoyced to see Treason so justly rewarded. *Daniel.*

Earl *Walsheoff*, for falsifying his Faith twice, was Executed by the Command of *William* the Conquerour. *Daniel.*

1133.

Robert de Melent, a Man of great Employment, fell from his Master, King H. 1. and conspired with *Hugh* Earl of Mountfort and wrought him great Troubles. But at last fell into Disgrace, and died bereft of his Estate. *Daniel.*

1070.

Thomas de Becket, that Trayterous Arch-Bishop, in the Reign of King H. 2. was Murdered, by 4 of our *English* Knights. *Daniel.*

1208.

Geoffry, Arch-deacon of *Normich*, serving in the King's Exchequer, conferring with the Rest of his Brethren

threaten, about the Sentence of Excommunication, given by the Pope, against King *John*, affirmed, That it was not safe for Men beneficed, to remain in the obedience of an Excommunicated King. And so without Leave, retired himself home, and was the first Subject of the wrath of the King, his Master, upon whose Commandment, he was put into a Sheet of Lead, wherein with the weight, and want of Victuals, he soon perished. *Daniel.*

Leoline and David, two Brothers and Princes of *Wales*, for their Rebellion against our King *E. I.* were both put to death, and their Heads set upon the Tower of *London*. *Daniel.*

Sentence of death was given against *Thomas Earl of Lancaster*, by drawing, hanging, and Beheading as a Traytor. The two first punishments were pardoned, in regard he was of the Royal Blood, *H* and

and only was beheaded. *Daniel.*

1322. *Sir Andrew Harkley*, in the Reign of King *Edward* the Second, was degraded of all his Honours, Drawn, Hanged and Quartered at *London*, for his Trayterous Practises, *Daniel.*

1327. *Gourney* and Others, Murderers of King *Ed. 2.* came to a sad, and fearful End; This same *Gourney*, was taken at *Marseilles*, and killed on the Sea, before he came to *England*, that he might tell no Tales, who set him on work. *Daniel.*

1328. *Mortimer* for his Helinous Crimes, was condemned of High-Treason, and sent up to *London*, there drawn and hanged at the Common Gallows, where his body remained two days, as an Opprobrious Spectacle for all beholders. *Daniel.*

1382. The Proud conceited Rebel *Wat Tyler* was Slain suddenly by the Mayor of *London*.
Trefilian

Tresilian, Chief Justice, for his Evil, and wicked Law-Counsel, was Condemned to be drawn, and hanged, which Judgment was accordingly put in Execution. *Trussel.*

1387.

Sir Roger Aston, and 28 more were attainted of Heresie, and High-Treason, whereupon they were condemned to be hanged, and burnt, Gallows, and all, which Judgment was accordingly executed in *Smithfield*. *Trussel.*

1414.

Jack Cade, styled, Captain *Mendall*, was in his Rebellion taken; but making Resistance at *Hothfield* in *Sussex*, was there Slain; His Body was brought to *London*, and beheaded, and quartered. *Trussel.*

Richard the third (King *de facto* only,) was by the Divine Revenge overthrown, and Slain at *Bosworthfield*; And his Body after many Indignities, and Reproaches (the Dirigies, and Obsequies of the Com-

mon People towards Tyrants,)
 was obscurely buried. Bacon H. 7.

Humphrey Stafford, taking San-
 ctuary at *Colnham*, a Village near
Abington, which place upon view
 of his Priviledge in the *King's-
 Bench*, being judged no sufficient
 Sanctuary for a Traytor, was Exec-
 uted at *Tyburn*. Bacon.

Sir William Stanley, Lord Cham-
 berlain to King H. 7. Household,
 blown up with the conceit of his
 own merit, was Arraigned of High-
 Treason, and condemned, and pre-
 sently after beheaded. Bacon.

Perkin Warbecke (the King of
 Rake-Hells, that had offended
 thrice against Grace) was at the last
 proceeded with, and by Commis-
 sion of Oyer and Terminer arraign-
 ed at *Westminster*, upon divers Treas-
 ons, and condemned, and a few
 dayes after Executed at *Tyburne*;
 And there were Executed with
 him, the Major of *Corke*, and his
 Son

Son who had been principal Abettor of his Treasons. Bacon.

The Earl of *Warwick* for conspiring with *Perkin* to raise Sedition, and to destroy King *H. 7.* confessing the Indictment, had Judgment, and was shortly after beheaded on Tower-Hill. Bacon.

The Counterfeit *Plantagenet* Lambert *Stimul*, and the Crafty Priest his Tutor, were both taken Prisoners; The former was taken into Service in King *H. 7.* Court, to a base Office in his Kitchen, so that (in a kind of *Mattacina* of humane Fortune) he turned a Broach, that had worn a Crown; As to the Latter, the Priest, he was committed close Prisoner, and heard of no more, the King loving to Seal up his own dangers. Bacon.

Upon the Commissioners entring into a Taxation of the Subsidy in *Yorkshire*, and the Bishoprick of *Durham*, the People grew into a great

great Mutiny, saying openly, That they would not pay the Subsidy; Thereupon they rose up in Armes, Creating for their Leader Sir John Egremont, a Factionous Person, and being also animated by a base Fellow, called *Jack a Chamber*, a very Bontefen, and entred into open Rebellion: *John a Chamber* was Executed at York in great State; For he was hanged upon a Gibbet, raised a Stage higher in the midst of a square Gallows, as a Traytor paramount, and a number of his Men, that were his chief Complices, were hanged upon the lower story, round about him. *Bacon*

Edward Stafford, Duke of Buckingham, who was by one *Hopkins* a Charter-House Monk, induced to believe, That Heaven had decreed to cut off King H. 8. after whose death he should Reign, and the Crown be for ever Established on his Posterity; could not forbear, but must brag of the Juglers promises, in the hearing of one *Kne-*

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was, upon whose Impeachment, he was Arraigned and Condemned, and publicly beheaded. Bacon.

Elizabeth Barton, according as she was instructed, proclaimes abroad, That King H. 8. adventuring to Marry another, *Katherine* surviving, should, if in the mean time he died not some infamous death, within one Month after be deprived of his Kingdome. The King as soon as he heard of these Trayterous words, caused the Impostrix to be apprehended, who upon Examination, discovered the rest of the Conspirators, who were all committed to Prison, until the next Parliament should determine of them; The said *Eliz. Barton*, *Bocking*, *Masters*, *Deering*, and *Rigby*, *Monkes*, together with *Gold*, a Priest, were by Parliament adjudged to dye. They publicly confessed the Imposture, and were hanged, and their Heads set over the Gates of the City of London. Bacon.

1533.

H 4.

Thomas

1537. *Thomas Fitz-Gerald*, beheaded for Treason, his Five Uncles hanged, drawn, and quartered; and their Members fixed over the Gates of London.

1537. *Nicholas Musgrave*, and *Thomas Gilby* for raising a Rebellion, and besieging *Carlisle*, were deservedly Executed. *Bacon*.

1569. *John Story*, an English Fugitive, consulted with one *Prestal*, a Magical impostor against the Queen's life, suggested Counsels to the Duke of *Alva*, for invading his own Countrey; He being allured, by a wile into a Ship, which was reported to have brought over English Merchandizes, and Heretical Books, they presently set Sail, and brought him into *England*, where he was in the year 1572 Executed as a Traytor. *Cambden's Eliz.*

1569. There was an Army raised by those addicted to the *Romish* Superstition, which Forces were soon vanquished,

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vanquished, and some of the chiefeſt Conſpirators received condigne puniſhment, Amongſt whom was Executed one *Plomtree* a Priest. *Cambd.*

John Felton, who had ſet up the *Bull*, upon the Biſhop of *London's* Palace Gates, was taken, arraigned, and confeſſed the Fact; for which he was hanged near the place, where he had ſet it up, attaining the vain Empty Shadow of Glorious Martyrdome. *Cambden.* 1570.

The Duke of *Norfolk* in 11 of 1572. the Queen, was arraigned, for that he had Trayterouſly conſulted about depoſing the Queen, from her Throne, and making her away, and by raiſing War, and bringing a Foreign power; to invade this Kingdome; He was found Guilty, condemned, and executed accordingly. *Cambden.*

Edmund Campian (who among 1581. the Romanists, is a moſt famous Martyr,) was for his Villanous Crimes,
H. 5

The Lawes for the Crimes, Sedition, and Treason, Condemned, and Executed. *Camb-* *den.*

1583. Some *English* Men betrayed *Alost*,
a Town in *Flanders*, to the *Spani-*
ards. And the Authors of this
same Treachery, came every one of
them to an unfortunate end.

1. *Pigot* went into *Spain*, in
hopes of a Reward, but being de-
rided, he returned again into the
Low-Countryes, where he was taken
by his own Countrey-Men, and sent
into *England*, and died miserably
in Prison.

2. *Dalton*, of a Traytor, be-
coming a Pyrat, was hanged in
England.

3. *Vincent* was Executed in *Bra-*
bant.

4. *Walsh*, after he had been tor-
ted with a thousand Miseries, was
Slain in *France*. *Cambden.*

The

The Earl of *Desmond* (that Famous Rebel, and Traytor to his Countrey) was Slain, being run through the Body in many Places. His Head was sent over into *England*, and set on a Pole, upon *London-Bridge*; He broke his Allegiance to his Sovereign, through the Persuasion of Certain Priests, amongst whom the chiefest of all was,

Nicholas Sanders, an *Englishman*, who almost after the death of *Desmond* was most miserably famished to death, when being forsaken of all Company, and troubled in mind for the adverse success of the Rebellion, he wandered up and down Woods, Forests, and Hills, and found no Comfort. In his Rouch were found certain Orations, and Epistles written to Confinme the Rebels, Stuffed with large Promises, from the Bishop of *Rome*, and the *Spaniards*. Thus the divine Justice (if a Man may judge.)

156.

The Lanes for the

judge,) stopped that Mouth with Hunger, which had been alwayes open to raise Rebellions, and to belch out malicious Slanders with Lies. For (to omit other untruths,) he was the first of all others, that breach't that abominable Lye; against the Birth of Queen Elizabeths Mother, which no man in those dayes in the fresh hatred of the Papists against her, ever knew; *England* in full 40 Years after never heard, the Computation of Times doth most manifestly convince of Falshood, and Vanity, and the forgetting himself (which behoveth not a Lyar to do) did himself plainly confute. *Cambden.*

1589.

Philip Howard Earl of *Arundel* was Arraigned for High Treason, and tryed by his Peers, for that he had Contracted a most strait Amity, with Cardinal *Allen*, Parsons the Jesuit, and other Traytors, which Plotted the Destruction of their Prince, and Countrey, by exciting both Foreignours, and Na-

tives.

Safety of the Crown.

8117

tives against their Prince for Restoring the ~~Romish~~ Religion, and was found Guilty, and had Sentence of Death Pronounced on him. *Cambden.*

Bradshaw, Burton, and others of *Oxfordshire*, for Levying War against the Queen, were attainted of High-Treason, and Executed at *Enslin Hill*.

1596.

The Earl of *Essex* Plotting with others, to Deprive the Queen of her Crown, and Life, and breaking into open Rebellion, was Arraigned, found Guilty, and had the Sentence of Death Pronounced against him, and was accordingly Executed. *Cambden.*

1601:

The Lords, *Cobham*, and *Greys Watson*, and *Clark*, Seminary Priests for their Treasonable Practices were brought to Condign Punishment.

1603.

The

1605. The *Papists* did Plot a Treason Barbarous for Cruelty, unmatched in regard of Example; the Horrible Destruction by *Gun-Powder*, of the King, Queen, their Royal Progeny, and the whole Court of Parliament at once; Amongst the Monstrous Attempters, *Catesby*, *Digby*, *Faux*, *Garnet* the Priest, and several others were brought to Exemplary Punishment.

1660. *Oliver Cromwel*, *Ireton*, and *Bradshaw* were taken out of their Graves, and Hanged up at *Tyburn* by their Necks, and Buried under the Gallows, for being Guilty of the most Horrid Murder of the Royal Martyr, King *Charles* the First; in whom were all those Amiable Qualities, which in another Age would have Rendred him, Reverenced and Admired: So singular Piety, That the *Pourtrature* of King *Charles* in his Sufferings, will be Character of it beyond all expression but his own.

Several

Several of the *Regicides*, were 1660.
12 Years after that horrid Fact
committed on their Sovereign,
drawn, hanged, and Quartered,
some at Charing Cross, and some
at *Tyburn*:

Venner, a Cooper, and several o- 1660.
thers of the Fanatick Crew, for an
Insurrection made in the very
Heart of the City of *London*, were
brought to the fatal end of Tray-
tors.

Sir Henry Vane, and *John Lam- 1662.*
Bert, (Those two Ambitious Spi-
rits) for their Treasonable and Se-
ditionous Attempts, had the Sentence
pronounced on them, to be drawn
hanged, and Quartered; The for-
mer beheaded on Tower Hill, the
latter through his Majestie's great
Clemency is still alive, but conti-
nues still a Prisoner.

Edward Coleman (hurried by the 1678.
Chariot, and Six Horses, of *Disci-*
ferian

ferian Pride, and Ambition) for
 Conspiring the death of the King
 (whom Almighty God preserve
 and bless with a prosperous Reign
 over us,) the Subversion of the
 Government of England, and the
 Protestant Religion, was upon full
 Evidence found guilty of High-
 Treason and received Sentence, to
 be drawn, hanged, and quartered,
 and was accordingly executed at
 Tyburn.

The Three Persons, Ireland,
 1678. Grove and Pickering, being found
 Guilty of Seditious, and Trayte-
 rous Attempts and Conspiracies, re-
 lating to the great and damnable
 Plot lately (through the Mercy of
 God) discovered, received Sen-
 tence to be drawn, hanged, and
 Quartered. Two of which Per-
 sons, viz. Ireland, and Grove were
 Executed accordingly.

The Close of my Notes, shall be Sir
 Edward Coke's Note, Peruse over
 all our Books, Records, and Hi-
 stories,

' stories, and you shall find (sayes
 ' he) a Principle in Law, a Rule
 ' in Reason, and a Tryal in expe-
 ' rience, That Treason doth ever
 ' produce fatal, and final destructi-
 ' on to the Offender, and never at-
 ' taineth to the desired end (two
 ' Incidents inseparable thereunto.)
 ' And therefore Let all Men aban-
 ' don it, as the most Poysonous
 ' Bait of the Devil, and follow the
 ' Dictates of nature, and Holy Scrip-
 ' ture.

*Nobis inter Leges multas, easq; bo-
 nas hæc optima est, Regem colendum,
 et adorandum, ut Dei sospitantis effi-
 giem. Artabanus Persa.*

Fear thou the Lord, and the
 King, and meddle not with them,
 that are given to Change. *Solomon.*

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